Progressive Supermarkets, Inc. *and* Retail Store Employees Union Local 1262, United Food and Commercial Workers International Union, AFL-CIO and CLC. Cases 22-CA-9686 and 22-RC-8060

December 4, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 13, 1980, Administrative Law Judge Joel P. Biblowitz issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Respondent filed exceptions and supporting briefs.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge, as modified below,[3] and to adopt his recommended Order, as so modified.[4]

1. The General Counsel excepts to the Administrative Law Judge's failure to find that the Respondent unlawfully postponed the regularly scheduled January wage increase. The record clearly demonstrates, and the Administrative Law Judge found, that the Respondent postponed the scheduled January increase because of the pendency of the Union's petition. The Board and courts have long held that the withholding of pay raises from employees who are awaiting the holding of a Board election violates the Act if the employees otherwise would have been granted the pay raises in the normal course of the employer's business.[5] Unlike the situation in *Uarco Inc.*,[6] the Respondent here did not tell employees that the sole reason for its action was to avoid the appearance that it sought to influence the election. More important, it placed the onus for the postponement on the Union.[7] We therefore find that the Respondent violated Section 8(a)(1) and (3) of the Act.

We also disagree with the Administrative Law Judge's conclusion that the Respondent's repeated references to the possibility of strikes and the fact that economic strikers can be permanently replaced were protected by Section 8(c) of the Act. Rather, we view those references, when read in the context of certain other of the Respondent's campaign statements, to constitute implied threats violative of Section 8(a)(1).

A major theme of the Respondent's campaign literature and speeches was that unionization did not guarantee automatic increases in wages and benefits, or, specifically, that its office employees would receive the wages and benefits enjoyed by its unionized store employees. Thus, the Respondent repeatedly emphasized that the law did not require it to agree to any union demand, only that it bargain in good faith, that the only weapon a union had to force agreement was a strike, and that economic strikers could be permanently replaced. In conjunction with these points, Controller Cimini stated that the Respondent would do whatever it had to do to keep the Union out, that the Respondent "certainly would not agree" to pay the store rates, and that, if the Union demanded those rates, there would be a long strike. Vice President Gold stated that the Respondent knew how to protect its interests and, in both his speeches, stated that there was "no way in the world" that the Respondent would pay the store rates.

In concluding that the Respondent's strike statements were protected by Section 8(c), the Administrative Law Judge noted that the Respondent never stated that it would not bargain or never reach an agreement. To the contrary, he noted that the Respondent stated that it was required to bargain in good faith, that it spoke only of the possibility of a strike, and that it never foreclosed the

[1] The General Counsel's "Motion to Strike Respondent's Exceptions and Portions of Its Memorandum in Support Thereof" is hereby denied.

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. Further, there is nothing in the record to indicate that the Administrative Law Judge was biased or prejudiced against the Respondent or that the Respondent was accorded less than a full and fair hearing.

[3] In agreement with the General Counsel, we find that Vice President Gold's statements to employee Evers, following the termination of employee Medaska, are sufficient to establish the Respondent's knowledge of Medaska's union sympathies. In addition, we find it unnecessary to pass on whether the Respondent's campaign literature contained an unlawful solicitation of grievances since such would not affect the scope of the remedy. Finally, we shall leave to the compliance stage of this proceeding the determination of whether Medaska would have remained in the Respondent's employ beyond January 28, 1980.

[4] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on any backpay due Medaska based on the formula set forth therein.

Member Jenkins does not rely on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), for finding Medaska's discharge unlawful. As the Administrative Law Judge found, the asserted lawful reasons for her discharge were "incredible," so that no lawful reason exists and only the unlawful one remains. *Wright Line* is concerned only with deciding between a genuine lawful and a genuine unlawful reason for a discharge, and it is misleading and inaccurate to apply it where only the unlawful reason is genuine.

[5] See *Florida Steel Corporation*, 220 NLRB 1201 (1975), affd. 538 F.2d 324 (4th Cir. 1976), and cases cited therein.

[6] 169 NLRB 1135 (1968).

[7] See, generally, *Centre Engineering, Inc.*, 253 NLRB 421 (1980).

possibility of reaching an agreement. He further noted that the statements regarding the replacement of economic strikers were a correct description of the law. However, the Administrative Law Judge apparently failed to consider the Respondent's statements as they related to the Respondent's descriptions of the Union's response to unionization by its own clerical employees.

In a letter to employees dated December 28, 1979, the Respondent referred to a 1970 strike by the Union's office employees and made the following statements:

> You must think that Local 1262 would have some understanding for the needs and wants of its own office employees . . . . What Local 1262 did was to bargain the Office Employees Union into the ground, get the employees out on strike, and then permanently replaced all the strikers. The strike lasted for two months, and only one striker ever got her job back . . . .
>
> What makes you think that things will be any different here? This union has a track record of not treating office employees fairly. Moreover, we know how to negotiate hard, just like the union does. And we know about rights regarding the replacement of economic strikers.

In the speech given January 4, 1980, Vice President Gold reiterated that the Union had permanently replaced its own striking clerical employees and added:

> So you can ask the union what it means to be permanently replaced, because Local 1262 really knows how to do it. And I can assure you that this company knows how to do it as well.

Finally, Gold, in his last speech to employees, stated that the Union "broke" its own employees' union and, as to the Respondent's opposition to paying its employees increased wages and benefits, added that it was in "pretty much the same position that Local 1262 was back in 1970."

The above statements demonstrate that the Respondent's strike references went beyond the mere expression of "views, argument or opinion" protected by Section 8(c). Rather, the Respondent told its employees that the Union had previously bargained its own employees "to the ground," forced them on strike, and permanently replaced them. It described its opposition to its employees' demands as similar to the Union's and assured employees that, like the Union, it knew how to bargain "hard" and replace strikers. Moreover, Controller Cimini told employees that the Respondent would do whatever it had to do to keep the Union out. In this context, the Respondent's statements were not limited to the "ifs" and "possibilities" of strikes and collective bargaining but contained a not so subtle threat that, upon unionization, it too would force a strike, directly resulting in the permanent replacement of strikers and the loss of jobs.[8] Accordingly, those statements violate Section 8(a)(1).

2. The Respondent's threats to force a strike and permanently replace strikers add to the necessity for the bargaining order recommended by the Administrative Law Judge. Through its campaign statements and unfair labor practices, the Respondent made clear its opposition to its employees' unionization and, significantly, the dire consequences which would result. Thus, the Respondent threatened more onerous working conditions and told employees that, because of the union campaign, wages and benefits would be frozen. It also threatened that unionization would result in a loss of current benefits which would then have to be negotiated back.

More important, the Respondent's threat to discharge employee Plant, its threat that unionization would result in a strike and the replacement of employees, and its unlawful discharge of employee Medaska underscored its resolve to do, as Controller Cimini threatened, "whatever it had to do" to keep the Union out. As the Administrative Law Judge noted, no employer conduct is more serious than the discharge of an employee because of union affiliation, and such misconduct is particularly effective where, as here, the employer explicitly reveals to employees its unlawful motivation. Nor was the Respondent's unlawful activity limited to threats and reprisals. For, on at least two occasions, the Respondent impliedly promised to remedy employee grievances, thereby giving addded and unlawful emphasis to its contentions that the employees did not need a union to obtain the best that it could offer.

The Respondent's unfair labor practices were serious and accomplished their intended result—the dissipation of the Union's preelection majority. By its unfair labor practices, the Respondent vividly demonstrated to employees the perils of unionization and the rewards of its rejection and, with the employees so conditioned, the possibility of a fair re-run election is, at best, slight.

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[8] See *St. Francis Hospital*, 249 NLRB 180 (1980); *Components Inc.*, 197 NLRB 163 (1972). See also *Georgetown Dress Corp.*, 201 NLRB 102 (1973).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Progressive Supermarkets, Inc., Parsippany, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Add the following as paragraphs 1(i) and 1(j), relettering subsequent paragraphs accordingly:

"(i) Threatening that unionization would result in a strike, the permanent replacement of strikers, and the loss of jobs.

"(j) Withholding wage increases because of its employees' union activity."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten our employees with the loss of benefits should they choose to be represented by Retail Store Employees Union Local 1262, United Food and Commercial Workers International Union, Local 1262, AFL-CIO and CLC, or any other labor organization.

WE WILL NOT threaten to discontinue our employees' dental benefit plan should they choose to be represented by Local 1262 or any other labor organization.

WE WILL NOT threaten to freeze the wages or other benefits of our employees due to their activities on behalf of Local 1262 or any other labor organization.

WE WILL NOT threaten to install a timeclock for our employees should they choose to be represented by Local 1262 or any other labor organization.

WE WILL NOT interrogate our employees regarding their activities, and the activities of other employees, on behalf of Local 1262 or any other labor organization.

WE WILL NOT promise to correct the grievances of our employees in order to induce them to refrain from supporting Local 1262 or any other labor organization.

WE WILL NOT threaten our employees with discharge should they choose to be represented by Local 1262 or any other labor organization.

WE WILL NOT threaten that unionization will result in a strike, the permanent replacement of strikers, and the loss of jobs.

WE WILL NOT withhold wage increases because of our employees' union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL offer Diane Medaska immediate and full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole, with interest, for any loss of earnings she may have suffered because of our discriminatory conduct against her.

WE WILL recognize and, upon request, bargain with Local 1262 as the exclusive representative of our employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All full time and regular part time office clerical employees employed at our Parsippany office, but excluding confidential employees, professional employees, guards, all other employees and all supervisors as defined in the Act.

PROGRESSIVE SUPERMARKETS, INC.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge: This case was heard before me in Newark, New Jersey, on June 23, 24, 25, July 1 and 2, 1980. The complaint was issued on February 22, 1980, based upon a charge and amended charge filed respectively on January 7 and January 17, 1980, by Retail Store Employees Union Local 1262, United Food and Commercial Workers International Union, AFL-CIO and CLC, herein called the Union. Basically, the complaint alleges that Progressive Supermarkets, Inc., herein called Respondent, violated Section 8(a)(1), (3), and (5) of the Act by the following actions: (1) threatening its employees with loss of bene-

fits and more onerous working conditions, (2) threatening its employees with discharge if they selected the Union as their collective-bargaining representative, (3) informing its employees of the futility of selecting the Union as their collective-bargaining representative and impliedly promising its employees an improvement in their wages and benefits if they rejected or refrained from supporting the Union, (4) soliciting employee complaints and grievances to encourage the employees to refrain from supporting the Union, (5) discharging Diane Medaska due to her activities on behalf of the Union, (6) withholding an annual wage increase and then granting the annual wage increase in an amount greater than in previous years, due to its employees' activities on behalf of the Union, (7) providing its employees with a lounge and implementing split lunch breaks to discourage its employees from engaging in further activities on behalf of the Union, and (8) refusing to bargain with the Union which had been selected by a majority of Respondent's employees as their collective-bargaining representative in an appropriate unit.

On February 22, 1980, the Regional Director for Region 22 issued a Report on Objections and Order Consolidating Cases in Case 22-RC-8060 in which he found that the issues raised by the objections were coextensive with those set forth in the complaint in Case 22-CA-9686 and he therefore consolidated said objections with the unfair labor practice matter, for decision by me. The objections are as follows:

1. The employer, by its officers and agents, did solicit grievances from employees and sought methods to correct them in an effort to discourage employees' support of the petitioning union.

2. The employer, through its officers and agents, spoke to employees individually on the day before and the day of the election. During "those one on one" meetings, the employer intimidated, threatened, and coerced employees in an effort to discourage them from supporting the petitioning union.

3. The employer in remarks made at meetings of employees, threatened employees with a loss of their fringe benefits and dire consequences in the event that the Union succeeded in the election.

4. The employer, on January 4, 1980, did discharge Diana Medaska because of her support for the petitioning union and in an effort to discourage others from voting for Local 1262. By these and other acts, the Employer destroyed the laboratory conditions required by the Board in the conduct of a fair election.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New Jersey corporation with its principal office located at 1279 Route 46, Parsippany, New Jersey, is engaged in the operation of retail supermarkets within the State of New Jersey. Annually, Respondent's gross revenues exceed $500,000 and, for the same period, it purchased goods and supplies valued in excess of $5,000 which were transported to its place of business in interstate commerce directly from points outside the State of New Jersey and purchased goods valued in excess of $50,000 from suppliers located within the State of New Jersey, who, in turn, had received said goods directly from points outside the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE APPROPRIATE UNIT

Respondent admits, and I find, that the appropriate unit herein is all full-time and regular part-time office clerical employees employed at Respondent's Parsippany office, but excluding confidential employees, professional employees, guards, all other employees and all supervisors as defined in the Act.

IV. THE EMPLOYEES INVOLVED

The unit involved in this proceeding is Respondent's office employees at its office in Parsippany, New Jersey. On November 16, 1979,[1] the date the Union simultaneously made its request for recognition and filed its petition with the Board, the following 12 office employees were employed by Respondent: Judy Edwards, Dorothy Evers, Christine Kelly, Diane Medaska, Linda Packard, Kathleen Piper, Katalin Plant, Nancy Rinaldo, Mary Salink, Rose Marie Scalfani, Bablir Jo Sedicavage, and Anne Shally. Between November 16 and November 30, Nancy Gerard was hired by Respondent as an office clerical employee. On December 7, when the parties entered into a consent election agreement, they listed these employees on a *Norris Thermador* list. Lee Cimini, Respondent's controller (and an admitted supervisor), together with Deborah Huck and Diane Branca, supervise the work of these employees. To a lesser degree, Edward Gold, Respondent's vice president, and to an even lesser degree, William Margolis, Respondent's president, spend some time in the office supervising the work of these employees.

V. THE UNION'S AUTHORIZATION CARDS AND MAJORITY STATUS

The Union obtained a total of 11 authorization cards from these employees. Under the portion of the card the employee fills in, and above the place for signature, the following legend appears: "hereby authorize United Food & Commercial Workers International Union, AFL-CIO, CLC, or its chartered local union to represent me for the purposes of collective bargaining, respecting rates of pay, wages, hours of employment, or

[1] Unless otherwise stated, dates in November and December are in 1979, and dates in January, February, or thereafter are in 1980.

other conditions of employment, in accordance with applicable law."

On or about November 12, Louis Marcucci, organizing director for the Union, received a telephone call from Evers who informed him that Respondent's office employees were interested in being represented by a union and would he meet with them. They arranged to meet at a nearby motel after work on November 14. The employees who were present at this meeting were Evers, Edwards, Plant, Medaska, Packard, Piper, and Branca.[2] They spoke with Marcucci who handed out authorization cards to them all and each of them signed a card and returned it at that time to Marcucci.

Although acknowledging the existence of these signed cards and others to be discussed *infra*, Respondent attacks the validity of these cards on the ground that they were signed as "election only" cards. Marcucci testified that he informed the employees that the Union "wanted the cards so that we could prove to the company that we did represent a majority of the employees. We had intentions of demanding recognition." He also testified that he informed the employees that the first purpose of the card was to use them to seek recognition from Respondent and following a rejection of recognition the Union would use the cards to petition the Labor Board for an election. Evers testified that Marcucci informed them that the purpose of the card was to authorize the Union to represent them and explained the election procedures before the Board. On cross-examination, Medaska, who testified that she had read the authorization card, testified that Marcucci said that after the cards were signed a petition would be filed and a secret-ballot election would be held. In answer to a question from me, she testified that she was informed that the signing of the cards "showed that the majority of us in the office did want the union to represent us, and that this would bring about an election, and a final decision." On redirect, in answer to the question: "Did he indicate to you under what circumstances an election might be held?" She answered: "If the Company would not agree to just the cards." Plant testified as follows: "Mr. Marcucci explained to us that through the signing of the cards we would be authorizing the union to represent us, and using those cards they would have to go and make a demand for recognition. But if that didn't work, then we would have to go on to an election." Piper testified as follows: "He said that this would authorize the union to go into the office to find out—to let them know that the girls wanted a union. This would authorize him to send someone in to petition the company to get the union in, and if it got to the point where they would not accept the petition or the request, or whatever it's called, that it would go into an election so many days after this particular presentation." Packard testified that Marcucci told them that by signing the cards the employees would give the Union the authority to represent them in trying to get a union into the office, that if a majority of the employees signed the cards he would request that Cimini recognize the Union, but in all likelihood Cimini would not agree to that, and they would then go to an election. Edwards testified that Marcucci said that signing the cards showed that the employees wanted the Union to represent them:

> A. When he gave the cards to us he said that we needed a majority of the girls to sign the cards if we wanted the union to represent us, that if we got a majority it could go into an election.
>
> Q. That if you got a majority it could go into an election; is that correct?
>
> A. Yes, if the company didn't want it, if they were going to fight it, that if they didn't accept the union after the cards were shown to them, that it could go possibly into an election.

Before the conclusion of the meeting the employees requested some additional cards from Marcucci to give to some of the employees who did not attend the meeting; Evers and Medaska took cards with them. On the next day, during working hours in the office, Evers gave authorization cards to Rinaldo and Sedicavage; they read the cards and returned them to Evers, who returned the cards to Marcucci at a luncheon meeting the Union held that day with the employees. Both Sedicavage and Rinaldo were present at the meeting and Marcucci showed them their signed authorization cards and asked them if they had signed them and they said they had.

On the same day, also during working hours in the office, Medaska handed authorization cards to Kelly and Salink; she explained to them that the purpose of the cards was to get the Union to represent them and they would probably have to go to an election if the Company would not accept the cards. She also told them to read the cards and return them to her. Kelly and Salink took the cards into the back room of the office and returned them signed to Medaska later in the day. Medaska then gave these cards to Evers who returned them to Marcucci about 5 p.m. that same day. That evening, Marcucci called Kelly and Salink at home, told them that he had received their signed authorization cards, and asked them if they had signed the cards and they said that they had.

Gerard began her employ with Respondent on November 19. Medaska gave her an authorization card during a break and told her it was for the purpose of having the Union represent them. Gerard read the card, signed it, and returned it to Medaska who then gave it to Evers. At a meeting the Union held with the employees on November 21, Evers gave the card to Marcucci; Gerard was present at this meeting and Marcucci showed her the card and asked her whether she had signed it and she said that she had.

In *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963), the Board stated that unambiguous cards or "single purpose cards" which state that the purpose of the card is to authorize the union to represent them for collective bargaining, and do not state that the purpose is

[2] Upon noticing that Branca set forth "accounts payable supervisor" as her position on the authorization card she signed, Marcucci had her speak to the Union's attorney and when he was satisfied that she was a supervisor within the meaning of the Act, he informed her not to come to the meetings between the Union and the employees and not to take an active part in the Union's organizational activities at Respondent. Branca did not solicit any union cards from employees.

to seek an election, will be counted unless it is proven that the employee was told that the card was to be used solely for the purpose of obtaining an election. This approach was approved by the Supreme Court for "single purpose cards" in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 606 (1969) whence it stated that "employees should be bound by the clear language of what they sign unless that language is deliberately and clearly cancelled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature."

The authorization cards herein refer only to union representation and are therefore "single purpose cards." Although the testimony of the card signers and solicitors was not as exact as a purist in labor law would desire, it is clear that the employees were told that the purpose of the card was to designate the Union to represent them and that there would be an election only if Respondent refused to voluntarily recognize the Union on the basis of these cards. The cards were therefore a valid designation of the Union as their collective-bargaining representative.

On the basis of these cards the Union was designated as the collective- bargaining representative of 10 out of the 12 employees in the unit as of November 16; on November 21, when Gerard signed her card, the Union had 11 designations out of 13 unit employees. Therefore, during this period, the Union was clearly designated as the collective-bargaining representative of a majority of the employees in appropriate unit—Respondent's office employees.

VI. THE REQUEST FOR RECOGNITION

On November 16, Michael Parente, the Union's business agent, went to Respondent's office. He met Cimini, informed him that the Union represented a majority of the employees and wanted to be recognized as their bargaining agent. He also handed Cimini a letter from the Union to Respondent, entitled "Demand For Recognition" dated that day, stating:

> Dear Sir:
>
> This is to advise you that a majority of your employees in an appropriate unit of clerical employees located at Progressive Supermarkets, 1279 Route 46, Parsippany, New Jersey, have designated Retail Store Employees Union, Local 1262 as their exclusive representative for the purpose of collective bargaining. The bargaining unit consists of all regular full-time and part-time employees except supervisors and confidentials, as defined in the National Labor Relations Act of 1947, as amended. We accordingly demand recognition in behalf of such employees.
>
> We offer to prove our majority status by submitting signed authorization cards to be checked against your payroll by a mutually selected impartial person. It is the desire of this union to institute negotiations with you immediately to work out an agreement on a contract which will set forth wages, hours and other terms and conditions of employment. No other person or organization now represents a majority of these employees and you are hereby cautioned against entering into any contract or negotiating with any person or organization presuming to act as agent for, or in behalf of, any such employees.

Cimini told Parente that he did not have the authority to recognize the Union, that Gold would have to do that, but that Gold was not in the office. Cimini requested to see the authorization cards, but Parente declined the request. Parente left without making an appointment to see Gold.

At the same time, Marcucci was waiting at the Board's office in Newark, petition in hand. Based upon arrangements previously made, Parente called the Union's office and left a message at the switchboard that the Union's demand for recognition had been denied. Marcucci then called the Union's office, was informed of Parente's message and filed a petition with the Board covering the instant unit. On the same day, the Union sent a telegram to Respondent, to the attention of Cimini, demanding recognition in the unit involved herein. The telegram states that the Union was prepared to demonstrate its majority status and that a petition had been filed that day. The telegram also requests an immediate response from Respondent. There was no response to the telegram until the parties entered into the consent election agreement on December 7.[3]

I find that the Union's actions on November 16 constitute a valid request for recognition. Although Cimini was, in all probability, not the proper person from whom to demand recognition, he was, admittedly, an agent of Respondent and Parente left with him the Union's demand for recognition. Even if that were not a sufficient request (and I find that it was) the Union's telegram to Respondent certainly was sufficient.

VII. THE CAMPAIGN

Between December 7 and January, Respondent sent four letters to its employees; in addition, Cimini made one speech and Gold made two speeches to Respondent's employees, in addition to speaking to a number of employees individually. As the General Counsel alleges that the speeches and meetings with the employees, combined with the contents of the letters, constitute the unfair labor practices and objectionable conduct herein (together with the termination of Medaska) it is necessary to set forth the letters *verbatim*. The letters are dated December 13, December 21, December 28, and January 7, were all prepared by Respondent's counsel and retyped on Respondent's stationery, were signed by Cimini, and end with a "Yes" and a "No" box, with an X in the "NO" box.

A. *The Letters*

To Our Employees:

[3] At the election conducted on January 10, there were five votes for the Union and six votes against. One ballot (that of Medaska) was challenged, but was not determinative.

As you know, on Thursday, January 10, 1980, the National Labor Relations Board will hold a secret ballot election among the Company's office employees. The purpose of this election is to determine whether or not you want to be represented by Retail Clerks Local 1262.

In a very real sense, you will be deciding whether you want to turn over your most important affairs to union officials about whom you know very little and who represent primarily store employees. I feel sure you want to make this vital decision based on the *facts* and not campaign talk or worthless promises. The Company is sincerely convinced that a union would *not* be in your best interests, and during the next few weeks we intend to submit to you facts clearly showing the soundness of this position.

The following answers to questions often asked by employees have been prepared to provide accurate information on which you can make a sound decision as to whether or not you want a union to act and speak for you. We want to be sure that you are not misled by any false claims or empty promises from union representatives. It is only right and fair that you should know the truth on the whole matter before you make up your mind.

1. Q. Will I lose my job in the event the union is rejected and I may have signed a union authorization card or was active in behalf of the union?

A. Positively not! The Company will not penalize, punish or discriminate against employees because they signed union cards. No matter how unwise we think it is that you may have signed a card, no employee will suffer at the hands of the Company because of his union activity. And if anyone has told you anything contrary to this—whether he be a union organizer or a fellow employee working for the union—*he has told you something that is absolutely untrue.*

2. Q. If I vote against the union, will I lose my job in the event the union wins the election?

A. Definitely not. Neither the law nor the Company will permit or tolerate discrimination among employees.

3. Q. Will those who vote for the union get special advantages if the union should win the election?

A. No. In the first place the election is held in secret and how an individual votes is unknown by the Company or the union. Secondly, following the election employees will be treated alike. The Company will not permit any discrimination whatever. Under no circumstances will union members get any special advantage over non-members.

4. Q. Do I have to vote for the union if I have signed a union authorization card or paid money to the union for dues or initial fees?

A. Certainly not. It doesn't make any difference whether you have signed a union card or attended union meetings. The election will be your opportunity to vote in freedom and by secret ballot. No matter what commitment you may have made, verbally or in writing, to any union representative or to any fellow employee, no matter what you may have done or said in advance of the election, *you are entirely free to vote as you please.*

5. Q. Can the union guarantee me an increase in wages or any other benefit?

A. No. Only the Company can give you more money. It is the Company that furnishes your job and your paycheck—not a union. A union will never furnish you a day's work or a cent of pay.

6. Q. If the union wins the election, will the law compel the Company to reach an agreement with the union?

A. Absolutely not! The Company does not have to agree to a single thing the union proposes so long as we bargain in good faith. The law itself provides that bargaining in good faith does not require the Company to agree to any union demands or to make any concessions to the union. Thus, we do not have to sign any contract which we don't believe to be in the Company's best interest. There is no law that forces us to agree with the views and demands of the union.

7. Q. If the union wins the election, will we automatically get the things the union has been promising, such as the retail clerks store contract?

A. No. Even if the union wins an NLRB election, nothing happens automatically. The union could ask for anything, but as long as we bargain in good faith, the Company does not have to give in to any demand which we believe would not be good business practice or might be harmful to the Company or its employees. Thus, there is no way for the union to guarantee promises that they may have made. Ask yourself if you can guarantee to spend someone else's money.

8. Q. If the union wins the election, will we be called out on strike?

A. The only way that the union can try to force the Company to agree to what the union has been promising is to call you out on strike. Promises are cheap, but it is something else for the union to fulfill those promises. There is only one sure way to avoid the possibility of strikes and that is not to have a union.

9. Q. If the union calls us out on strike, will we get paid while the strike is going on?

A. No! If you strike, you lose your pay. The Company is not required to pay you while you are on strike. Under New Jersey law, strikers are not entitled to unemployment compensation. Moreover, your Company-paid insurance benefits might also be stopped in the event you do go out on strike. The union might give you a handout, or pay you some limited benefits, but you also ought to know you

can't even get unemployment benefits while you are striking. A good question to ask yourself here is who will pay your bills if you are walking in a picket line.

10. Q. If the union calls a strike and I go out on strike, can I lose my job?

A. Yes! Under the law, if the union calls a strike to try to force the Company to agree to the union's economic demands, the Company is free to permanently replace the strikers. This means that if you are permanently replaced in such a strike, the law does not force the Company to rehire you immediately after the strike is over. You might end up on a preferential hiring list, having to wait weeks or months for a vacancy to occur.

11. Q. Will I lose my right to discuss on my own behalf with Company officials about my wages, hours and working conditions if the union is voted in?

A. Yes. If the union were to win the election, all the employees, even those who vote against the union, will absolutely lose their right to discuss these subjects individually with management. None of them will be able any longer to come to me or their supervisors and discuss privately their own personal cases regarding wages, hours and working conditions.

12. Q. If the union wins, who will be the union shop stewards and committeemen who will handle the affairs of everybody else?

A. Look around you and see who is active in pushing this union. In all probability, there is your answer.

They will be running things for you. They will be the ones working with the union negotiators and officers in bargaining with the Company over your pay, your working hours, and your employment benefits. They will be the ones handling your grievances.

Ask yourself this question: Are they people whom you consider to be capable of handling your problems and into these hands you are now ready to trust your affairs for the future?

13. Q. Does it cost money to belong to a union?

A. Yes! It could cost quite a bit, about $150.00 a year. Unions collect monthly dues, and besides that, there could be other charges such as initiation fees and assessments. Unions can also fine members who violate union rules. A union must have income to keep going and to pay its officers and organizers, and its biggest source of income is dues. This explains its interest in YOU—not as an individual but as a dues payer!

14. Q. What if we vote for the union just to try it out; can't we get rid of it if we don't like it?

A. Getting rid of a union once it is in, would be a hard job. Once a union gets in, it normally remains your bargaining agent until a new election is held. In order to get an election, 30% of the employees would have to sign a petition or some other document. Voting a union in is easy. But when you find you made a mistake, it's a pretty hard job to get out of it. You're best off not getting into it in the first place.

15. Q. Why is the Company opposed to a union?

A. The Company feels that a union will only cause dissension among our employees and bitterness between those who are for or against the union. It feels that a union will try to generate trouble between the management and its employees in order to justify its own existence.

We feel that we are able to work out our problems with our employees on a personal basis, without the interference of outsiders. The Company does not feel that its employees have to pay their good money to a union to get the best the company can give to its employees. And we think that we have done pretty well by our employees, both in salary rates and in fringe benefits.It is my sincere hope that these facts will be helpful to you in making the important decision you will have an opportunity to make on January 10. I would recommend that you think seriously about them and if further questions occur to you, please feel free to ask me about them.

To Our Employees:

By now, you have had an opportunity to reflect on this union election that's going to be held here on January 10, 1980.

We have tried to explain to you that even if the union were to win the election, you would not automatically get any increases in your salary or benefits. All a union wins, even if it wins an election, is the right to sit down and negotiate with the Company about wages and benefits.

But negotiation does not necessarily mean agreement. The law provides quite clearly that the obligation to bargain does not require the Company to agree to any union proposal. The enclosed leaflet, which is excerpted from an official National Labor Relations Board publication, explains what *this* bargaining obligation means. What it does not mean is that either party must agree to anything it feels is not in its best interests.

What happens if the Company and the union negotiate but can't reach agreement? The only weapon the union would have would be to pull you out on strike. Remember, strikers don't get paid and they are not eligible, under New Jersey law, for unemployment compensation. Moreover, the Company would not have to pay insurance premiums for employees who are out on strike.

Finally, employees who strike for more money or higher benefits are called "economic strikers" and are subject to being permanently replaced by other employees. Remember, just because the union calls a strike, it doesn't mean that everybody has to go

out on strike and it doesn't mean that the Company has to stop its operations. So if an employee goes out on strike and gets permanently replaced, when the strike ends she does not get her job back right away but has to wait until a vacancy occurs. That could take weeks or even months. The first paragraph of the enclosed leaflet gives you the official word from the Labor Board on that subject.

You don't need a union to get the very best this Company has to offer. Vote for yourselves on January 10; vote NO.

To Our Employees:

I hope that none of you are being fooled into believing that getting a union in here is a guarantee of anything at all, except perhaps lots of trouble for all of us.

There's something that you all ought to know about; and it deals with how this union treats its own office employees. Some years ago, back in 1970, the Union's office employees organized, went to a Labor Board election and won. The Union was forced to sit down and bargain with the Office Employees Union that represented its own office employees.

You might think that Local 1262 would have some understanding for the needs and wants of its own office employees. You might think that—but you'd be dead wrong. What Local 1262 did was to bargain the Office Employees Union into the ground, get the employees out on strike, and then permanently replaced all the strikers. The strike lasted for two months, and only one striker ever got her job back. That's how this union handled negotiations with the union of its own office employees.

What makes you think that things will be any different here? This union has a track record of not treating office employees fairly. Moreover, we know how to negotiate hard, just like the union does. And we know about rights regarding the replacement of economic strikers.

Ask the union how it treats its own office employees. Ask the union if it's paying its own employees the same wages that the store employees get. It doesn't. The Union's own office employees earn about the same as you do, and they don't get cost-of-living increases. There is no set time for increases, while you get reviewed twice a year.

Your salary and benefit package is every bit as good as what the Union pays, and probably a lot better. You don't need a union to get the best this Company has to offer.

Vote for yourselves on January 10. Vote NO.

To Our Employees:

The Labor Board election will be held on Thursday, January 10, 1980 in the vacant office across the hall. The polls will be open from 3:00 p.m. to 3:30 p.m. and you may vote at anytime during that 30 minute period.

All of the office personnel, except for the two supervisors, are eligible to vote. This election will be decided by a majority of those who actually vote. If you don't vote, your future could be decided by someone else.

Here are a few things you should keep in mind before you vote:

1. Voting Procedure. The ballot you will receive will have two spaces, the one on the left marked "Yes" and the one on the right marked "NO." If you do not want the union, you should put an "X" in the "NO" space. Do not sign your ballot; if you do, your vote will not count.

2. Secrecy of the ballot. The election will be conducted by an agent of the U.S. Government, who will insure that the election is conducted by secret ballot. No one will ever know how you vote.

3. Freedom of choice. This is your election and your choice to make. You owe it to yourself and your family to vote strictly on the basis of FACTS, and not on the basis of some vague union promises. You are free to vote as you wish regardless of what you may have said and done in the past. Even if you signed a union card, you are 100% free to vote NO in the election. If anyone has told you that you are committed to vote for the union, he is telling you a lie. You are free to vote as your conscience dictates.

4. Union promises. Don't be misled by empty union promises. The union cannot guarantee you a single thing. Even if the union were to win the election, the Company's only obligation would be to bargain with the union. But as we have pointed out to you, the law does not require the Company to agree to any union demands or to make any concessions to the union. Nor can the union guarantee you job security. All a union can bring you is job insecurity in the form of a strike.

5. The cost of a union. The only thing that a union victory will guarantee is that you will have to pay union dues of $150.00 or more a year. Having a union would also subject you to union discipline, and the union could fine you for "conduct unbecoming a union member," for crossing a picket line, or for some other silly charge.

6. What does joining a union mean? The U.S. Supreme Court put it this way: Joining a union "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees." What this means is that you would lose your individual rights, and in return some stranger would do your talking—and your thinking for you.

Be sure to vote. Some of you have said that you want no part of the union and that you don't want to vote. That's wrong. If you don't want the union but don't vote, you're really helping the union get in here. You've got to cast your ballot while the polls are open. Otherwise, you'll be letting someone else decide your future.

Before you vote, remember all the benefits you now enjoy, benefits that not only exceed what other office employees in this area get but are also as good as, if not better than, what the store employees get. These benefits include 11 paid holidays a year; an excellent paid vacation schedule; 12 days of sick leave per year; an excellent medical/hospitalization/major medical policy; funeral leave; a pension plan; competitive salaries with regular reviews and regular increases; a comfortable place to work; and steady work with no layoffs.

You didn't need a union to get these benefits, and you don't need a union to keep them and to improve upon them.

I hope that you'll give a lot of thought to this important election, and that you'll vote NO on January 10.

B. The Speeches

All the speeches were made to all the employees present on that particular day. The first speech was made by Cimini on December 20 in the office. The prepared speech that Cimini had in his hand on this occasion, is as follows:

> I'm sure all of you know what this meeting is all about. For reasons that I'm only now becoming aware of, a number of you have gone to the union and have asked for union representation. As you know, there's going to be an election here on Thursday, January 10, 1980, at which all of the people in the office, with the exception of two supervisors, will be able to vote by secret ballot about whether or not you want a union to be your exclusive bargaining representative.
>
> The Company's position in all of this is pretty clear, and I want to make sure that all of you understand it. We do not think that you need a union to get the very best that this Company has to offer, and we hope that you will vote No in the election on January 10.
>
> We think that a union would be a mistake, both for the Company and for you. Between now and January 10, we intend to explain our position to you and we hope that you will agree with us, or that at least a majority of you will agree with us, that you don't need a union here.
>
> You may be asking yourselves why the Company is opposed to a union here in the office when it has the very same union representing its employees in its store in Northern New Jersey. Well, the reason is pretty simple. We know what having a union means. It means a lot of problems, both for the employees and for the Company. We're stuck with it in the stores, and there's nothing we can really do about it so we have learned to live with it. But the stores are remote from the office. Mr. Gold and I aren't out there on a regular basis, and we don't know the people and we can't handle their problems directly. But the office is another situation entirely. Mr. Gold and I are here all the time. There's a small number of people involved, a total of about 15. We see each other everyday, and if any of you have any problems, you are free to bring them to us right away, directly without interference by anyone else. You don't need a union to do your talking for you as far as your relationship with us is concerned. That makes it a bit different from the situation in the stores. In the stores, there are a number of levels of management between Mr. Gold and the employees. That doesn't hold true here in the office.
>
> What I am saying is, if you have any problems you can bring them directly to us, without having to pay a union $10 or $12 a month in dues to do your talking for you. Unions tend to be devisive, and they cause problems simply to justify their existence. We don't need that kind of aggravation here in the office, not you and not me. I had always liked to think that we could resolve our problems together. I really don't know what makes you think that you need an outside party to do that for you now.
>
> There is, however, one thing that I have heard that distresses me because it demonstrates that the union is trying to sell you a bill of goods. I understand that the union has been telling you that if it wins an election here, the employees in the office will get the store rates of pay. Frankly, I don't blame employees for wanting to make more money. That's the American way. But I hope that none of you will be fooled into believing that if the union gets in here, you will automatically get what the food employees are getting in the stores.
>
> First of all, there is nothing automatic about anything even if the union wins an election. If the union were to win the election, all it would win would be the right to sit down and negotiate with us about your wages and working conditions. That's all we would have to do. We would have to bargain with the union in good faith. The union would be free to make certain demands, and we would be free to make demands of our own. And if we could not reach agreement, all the union could do would be to call you out on strike in an effort to try to force us to agree to its demands. I'll be talking more about these bargaining obligations and the business of strikes at another meeting.
>
> The most important thing I would like to get across to you right now is that there is a major distinction between the work done by the food employees in the stores and the work done by nonfood employees in the stores and by you people here in the office. The food employees work long hours, standing on their feet, dealing face to face with customers, handling cash, and generally performing work that is harder physically than the work that you do here in the office. I don't think that there's any reason in the world why you should expect to be paid more than, or even as much as, the food employees in the stores. Your work is a great deal easier from a physical standpoint. You sit in a nice office, you perform work at

your own pace, you take breaks on a regular basis and whenever you want to, you work Monday through Friday only, and day shift hours only, and you generally have an easier time of it. Now, if any of you are really interested in doing store work, I'll be glad to do my best to get you a job in one of the stores. But you can't expect to get paid the very same thing in an office that the food employees get in the stores.

The union recognizes this. The union contracts that we have covering our store here in Northern New Jersey, our contract with Retail Clerks Local 1262, has separate rates for full time food employees and for full time non-food employees. These non-food employees earn considerably less than the food employees, and they earn considerably less than you do. For example, as of April 8, 1979 and continuing until there is a raise of 20 cents an hour on April 6, 1980, a non-food employee after six months will be earning $3.35 an hour, going up to a high of $4.10 an hour after two years of employment. That rate is significantly lower than the rates of pay you now enjoy. So don't kid yourselves into believing that the union is going to press for a food rate for office people, or that if they do press for it, that we will ever agree to it. That's just not the way it works.

The union itself recognizes this. The Retail Clerks Union, including Local 1262, have a contract with Two Guys, and it provides for wage rates that are just a little bit less than you people are now earning. Those are non-food rates, and the union realizes that rates of that nature are lower than the food rates in the supermarkets.

I hope that none of you will be fooled into believing that if you vote the union in here, you will automatically get the food store food rates. That's just not in the cards. The union might be promising it to you, and if it is it's not telling you the truth. I can tell you here and now, however, that even if the union were to try to get that for you, we certainly would not agree to it. Then, the only weapon the union would have to try to force us to give in would be to call you out on strike. I know that none of you like that idea, and I know that I certainly don't either. But that's what it would take, a long strike, if the union were to make the demand for food employee rates in this office.

You don't need that kind of trouble, and neither does the Company. We have a pretty good organization here, and we do pretty well by you. Your fringe benefits are every bit as good as the fringes in the stores, and your salaries are every bit as good as the salaries for other office employees in this area. We compete pretty well in that regard, and we shall continue to do so.

Well, I've talked on a bit longer than I had intended to, now, if any of you have any questions, I'll be glad to answer them for you.

Cimini first testified that "I basically read it. I read the whole thing." He then testified," I would say ninety nine percent of the speech I read." After looking over the speech, he testified that he said everything that was in the speech and said nothing that was not in the speech. Later, in answer to a question from me as to whether he said anything that was not in the prepared speech, he testified: "Maybe one or two words as I took my eyes off the paper, that might have been changed." Cimini also testified that he never said that Respondent would take whatever steps it had to in order to keep the Union out.

Evers testified that Cimini said that the Union was trying to get into the office, and that the employees had great benefits and good salaries and that Respondent was going to do everything it could to keep the Union out. Plant testified that Cimini did not read from the speech, but referred to it several times and elaborated on what it said. She also testified that Cimini said that the employees were all aware that the Union had made a demand for recognition, but that he could not understand why the employees needed a union to get the best that Respondent would have to offer. He then discussed the benefits they were receiving and how good they were and concluded by saying that Respondent would do anything it could to keep the Union out. Gerard testified that Cimini referred to the speech that he had in his hand and said that there was going to be a secret-ballot election coming up and that he did not think the employees needed a union to get the best that Respondent had to offer and he could not understand why the employees wanted a union and that the employees should have come to speak to him about it. Cimini then discussed the fact that Respondent's store employees are represented by unions, including the Union, but since he and Gold were always available to the office employees they did not need a union to do their talking for them. He went on to say that if the Union won the election all it would win was the right to sit down and negotiate and the company would be required to bargain in good faith and if the parties could not reach an agreement all the Union could do would be to call a strike. He also said that Respondent would do whatever they had to do to keep the union out. He then informed the employees of the difference between the kind of work performed by Respondent's store employees and its office employees and that the office employees could not expect the same rate of work as that received by its store employees. He informed the employees that their fringe benefits were as good as those received by Respondent's store employees and that their salaries were as good as that of other offices employees in the area.

Packard testified that Cimini told the employees that they had good benefits and that he did not think they needed a union; if the Union did come in, everything would be negotiable. She testified that Cimini never said that Respondent would do anything it had to keep the Union out. Edwards testified that Cimini was holding papers in his hand reading from them; he informed them of the upcoming election and that Respondent did not think that they needed a union to get the best that Respondent had to offer; that the Union would be a mistake for the employees and Respondent. He said that the Union has represented its store employees, but he and Gold are not in the stores, but in the office and able to

deal directly with the office employees and that they did not need a union to do their talking for them. He said that they did not need to pay dues when you can discuss any problems directly with Respondent. He then said that even if the Union won the election, the office employees would not get the store rates of pay, that all the Union would win would be the right to negotiate with Respondent. He informed them that their fringe benefits were as good as that of the store employees. Edwards testified on direct examination that Cimini said that Respondent would do anything to keep the Union out. During a point-by-point questioning on cross-examination about Cimini's speech, she did not again refer to this statement.

Gold made his first speech on January 4. He testified that on this occasion, and for his second speech on January 9, he had with him the speech that was prepared for him by Respondent's counsel. Gold testified in the following manner of the use he made of the prepared text in both of these speeches:

> Q. How did you use them?
> A. I read them to a great degree. I used some of my own words, but I followed the content meaning of the speeches completely.
> Q. Did you vary the content of the speeches at all?
> A. Perhaps in one instance when I mentioned that there could be a time clock.
> Q. All right, but except for time clocks you followed the speeches, is that correct?
> A. That is right.

In answer to questions from the General Counsel, Gold testified as follows:

> Q. And while you followed the text fairly closely, you also deviated from the speech somewhat, did you not?
> A. Not to any great extent.
> Q. But you did say things that were not in these speeches themself?
> A. A word here and a word there.
> Q. Are you saying that you read right from the text?
> A. No.
> Q. How did you give the speech then? In what fashion? If you didn't read from the text?
> A. I just used my own language.

Gold testified that preceding these speeches he had learned that the Union had promised the employees that their wages would be increased to the level of Respondent's store employees and that whatever benefits they had could only increase in negotiations. The prepared text that Gold had in his hand for his first speech on January 4 is as follows:

> It's only a week now until the Labor election on January 10. I'm sure that many of you are getting tired of hearing from the Company, and I'm sure you are hearing from the Union as well, about how you should vote in this election. Well, that's the way things go in the political arena, and a Labor Board election is no less political than an election for presidents, for congressmen, or for mayor.
>
> In fact, a Labor Board election is probably a bit more important to each of you than is a political election, because the Labor Board election will have a very direct, immediate and real impact upon your working lives. What I mean is, if the Union gets in here, your working lives are going to be very radically affected. And when I talk about being "radically affected," I don't mean affected for the good, but for the bad. I really believe that if you vote a union in here, you'll be hurting the Company but, most importantly, you'll be hurting yourselves.
>
> Why do I say this? As I have said before, we get along with Local 1262 in our store, and I don't thing (sic) it is a bad union for the store employees. But I think it would (sic) an unmitigated disaster for you here in the office.
>
> After all, what is it that you really hope to gain by getting a union in here? It would be one thing if you were badly treated on a personal basis here at the office. I could understand it if I or anyone else in the management of this Company treated you with disrespect, fired people without reason, or generally did bad things to you. But that's not the case. We do our level best to treat you fairly and with the respect and dignity to which you are entitled. You don't need a union to get that, and I don't think that any of you should have any claim that we have not treated you fairly and with respect. If any of you think differently, I would really like to hear about it.
>
> It would be another thing if your fringe benefits were bad. But that's not the case. Your fringe benefit package is an outstanding one, every bit is good as to what the employees have in the store and certainly better than what the union itself provides to its office employees. You've got 11 holidays a year, 8 of them fixed holidays and 3 personal days. You've got an outstanding vacation schedule, with one-week vacation after six months, two weeks after one year, and three weeks after five years. In fact, your vacation schedule is more favorable than what the employees in the store have. You've got funeral leave, whenever anyone is unfortunate enough to need it. You've got twelve days a year of sick leave, more than they have in the stores. You've got medical, hospitalization and major medical insurance, including dental and optical insurance. The Company pays for that for each of you. You've got an outstanding pension plan, and you've got life insurance, paid for by the Company. That fringe benefit package is every bit as good as you would hope to get, and is a lot better than what the union itself has for its own employees in this office. I'll talk a little bit more about that later.
>
> As far as your wages are concerned, your salary rates are in line with what other people pay for office personnel in this area, and perhaps a little

better. Employees start here at $140 a week, and get a $10 a week increase after 90 days. Thereafter, all of you are reviewed twice a year, and increases are given as deserved. I don't think anyone can honestly say that she is being unfairly treated or underpaid for the work she is doing. If anyone thinks that, I would certainly like to hear it.

Now here is what it (sic) my understanding that the union is offering. The union appears to be promising—or at least some of you think that the union is promising—that if the union wins the election you will automatically get the store rate of pay. Let me disabuse you of that right now. There is no way in the world that we are going to pay a store rate for office work. In fact, under the union contract for the stores, there is a non-food rate, which is a lot less than what you are now earning. As I told you before, there's no way that we are going to pay a store rate for office personnel. The union doesn't do that for its office employees, and we certainly won't either.

Now let's suppose the union were to get in here and we would have to negotiate with it. Remember now, all the union wins if it wins an election is the right to sit down and negotiate with the Company about your wages and working conditions. In that letter I sent to you, I enclosed a copy of this leaflet [at this point, hold up a copy of the "Get the Real Facts" leaflet]. This leaflet is excerpted from this pamphlet [at this point, hold up a copy of the "Guide to Law and Procedure" pamphlet]. This pamphlet is an official publication of the National Labor Relations Board, and it explains what collective bargaining means. It means that while the parties have to confer in good faith, the bargaining obligation "does not, however, compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other."

This means that if we have to negotiate with the union, we would do so but we would be under no obligation to agree to anything that we felt was not in your best interests or in the Company's best interests. I can assure you that we know how to protect our interests. The union can make all sorts of demands, and we would be entirely free to reject them. Incidently, we would be entirely free to make demands of our own, to trade off for certain other things the union would want by getting the union to concede away certain of the things that you now have. For example, if the union wanted a union-shop clause, which would mean that everyone would have to join the union and pay dues in order to keep her job here, we might be willing to give that in return, for example, for a reduction of your sick leave. Those kinds of trade-offs are common in collective bargaining, as I'm sure that most of you know.

Well, let's suppose we had to negotiate with the union and we could not reach an agreement. What would happen then? Well, the only weapon the union would have would be to call you up on strike. I know that none of you like to hear that, but you might as well hear it now, and from me, because I'm sure that the union isn't talking about strikes with you. The only economic weapon a union has, to try to force an employer to give in to the union's demands, is to call the employees out on strike. Remember, strikers don't get paid, and they are not eligible for unemployment compensation benefits. Moreover, the Company is under no obligation to pay insurance premiums for strikers, so if employees go off on strike they might find that they might have to pay their own medical insurance premiums in order to maintain their coverage.

But there is a more important problem with economic strikers. An economic striker is an employee who goes out on strike for higher wages and more benefits. The Company is free to replace economic strikers permanently, and to continue to operate its business during the strike. That's what this leaflet and this pamphlet say. If employees go out on strike and they are permanently replaced, they don't get their jobs back when the strike ends, but they have to wait until a vacancy occurs.

This is no idle statement. Ask Retail Clerks Local 1262 about economic strikers, because that union knows first-hand how to replace strikers. Back in 1970, the Office Workers Union won an election among the employees of Local 1262's office. The union was certified and negotiated with Local 1262 but couldn't reach an agreement. So the Office Workers Union called a strike against Local 1262. That strike lasted for two months, from August to October, 1970. By the time the strike had ended, the union had replaced every one of the strikers. Out of the goodness of its heart, the union took back only one of the employees that went on strike; all of the others lost their jobs.

So you can ask the union what it means to be permanently replaced, because Local 1262 really knows how to do it. And I can assure you that this company knows how to do it as well.

I really don't like to have to say such things to you, but I think it is important that you understand what it is you might be getting yourself into if you vote this union in on January 10. All it would mean would be trouble, for the Company and for you.

As I have said before, you don't need a union here to get the very best this Company has to offer. We have always been able to deal with each other, without outside interference, in the past and I am sure that we can continue to do so in the future. Now, if you have any questions, I would be glad to anwer them for you.

Evers testified that Gold did not read from the speech he was holding; once in a while he referred to it, but he spoke mostly without reading from the speech. She testified that Gold began by telling the employees that their salaries were comparable to those of other office employees in the area; that they weren't as good as the store employees received, but they didn't do the same kind of work as store employees. She also testified that Gold said that some of the employees were going around

the office discussing the Union and the employees knew who they were. She testified that Gold said that if the Union won the election he would have to negotiate with the Union and everything would be negotiable; you do not start from where you are now. All the employees' benefits would be frozen and the employees would have nothing and would have to start at ground zero and renegotiate everything; for example, that if they had $5,000 worth of dental bills[4] they better pay for it themselves because everything would be frozen and they would not be able to use their benefits.[5] According to Evers' testimony, Gold then told the employees that Respondent's policy of granting wage increases in January would be frozen until everything was cleared up with the Union. Evers also testified that Gold said that if the employees went on strike, Respondent might not rehire them; that the Union had a strike of its employees and very few of them were rehired by the Union; he said that none of the other offices were unionized and that he was not going to be number one; that he can be very hard and he would do everything he could and would use every means to keep out the Union.

Piper testified that Gold seemed to be using the speech he was holding "as a guideline." She testified that he spoke about the upcoming election and that although the Union represents some of Respondent's store employees, he did not think it would be a good idea for them to represent the office employees; he also told them that if the Union won the election Respondent would be obligated to negotiate with the Union; that the Union would be free to make demands and Respondent would also be free to make demands and that he would be tough; everything would have to be negotiated from ground zero. She further testified that he said that if the Union and Respondent could not reach an agreement there was a possibility that the Union would call a strike and that Respondent could hire employees to replace the strikers, and if that occurred, the strikers might not get their jobs back immediately, but might have to wait until a vacancy occurred; he then mentioned the strike by the Union's employees and said that the Union knows how to replace strikers.

Gerard testified that Gold began by speaking about the election and said that the Union represented some of Respondent's store employees and that it was a pretty good union in the stores, but he did not think it was good for the office employees. He spoke about their wages and other benefits and compared them to wages and benefits paid to Respondent's store employees. He said that the Union appeared to be promising that if it won the election the employees would automatically receive the stores rate of pay[6] but there was no way that Respondent would do that. Gerard also testified that Gold said if the Union won the election, Respondent would have to negotiate with the Union and everything was negotiable; the employees would not start from one step better, "they would start from ground zero, scratch, and that everything would have to be renegotiated; he also said that anyone who had incurred bills using their dental plan, would have to pay these bills on their own because these benefits would be frozen." According to Gerard's testimony, Gold then informed the employees that if the parties could not reach an agreement there was a possibility that the Union would call a strike and, if this occurred, Respondent could hire permanent replacements and, at the conclusion of the strike the striking employees would have to wait for a vacancy before being reemployed by Respondent. Gerard testified that Gold concluded by saying that the employees do not need a union in order to get the best that Respondent could offer.

Rinaldo[7] testified that Gold began by telling the employees that they had good benefits, compared them with the benefits received by Respondent's store employees, and compared the work of the store employees with that of the office employees. She testified further that he said that if the Union won the election everything would be negotiable; according to her testimony, Gold never used the term "ground zero" nor did he ever say that dental benefits or any benefits would be frozen; he discussed dental benefits, but only along with the other benefits Respondent provided its office employees. Rinaldo then testified about Gold's mention of a time clock in his speech: "There was a comparison being made about the store personnel, the different types of work that they did, the dealing with the public, the punching of the time clock . . ." "There was not one there—we don't have to punch a clock now, but with the union coming in, there could be one installed" and "one could possibly be installed."

Packard testified that Gold spoke about the benefits Respondent gave to its office employees (although she did not remember any specific discussion of dental benefits) and said that if the Union won the election all the employees' benefits would be negotiable. According to Packard's testimony, Gold never used the term "ground zero" nor did he say that the employees would lose any benefits if the Union won the election.

Shally testified that Gold discussed the benefits the employees were then receiving and that if the Union won the election, all the benefits would be negotiable. According to Shally's testimony, Gold never said that if the Union won the election the benefits would be frozen or that, if he had to negotiate, everything would start at ground zero, nor did he say that if the Union won the election the employees might lose benefits. Other than that, Shally remembered very little of either of Gold's speeches.

Cimini, who was present at Gold's speeches, testified that Gold told the employees of the benefits Respondent gave them and said that if the Union won the election everything would be negotiable; "that they weren't automatically started from what we already had"; Gold never said that benefits would be frozen and never used

[4] There was much testimony to the effect that Rinaldo had a lot of dental work about that time, that Respondent's benefit plan covered a large part of the expense, and that the other employees were aware of this.

[5] The employees' existing benefits with Respondent covered dental bills.

[6] Gerard testified that the Union never told her that.

[7] Rinaldo testified that the Union had informed the employees that in negotiations benefits would start from where they were and go up from there; that they were not going to lose anything.

the term "ground zero"; in addition, according to Cimini's testimony, Gold never said anything about dental benefits being frozen, or that dental benefits would be adversely affected by the Union winning the election, only that they would negotiable.

Edwards testified that Gold had the speech in his hand and, at times, appeared to be reading from the speech, and at other times spoke without looking at it. Edwards testified that Gold began by stating that the Union represented some of Respondent's store employees, but he did not think the office employees needed a union; he then informed the employees of Respondent's fringe benefits for the office employees and said that they were good benefits and that their wages were in line with other office employees in the area. Edwards testified that Gold then said that he understood that the Union was promising that if it won the election, the employees would automatically get the rates received by Respondent's store employees, but that was not so; the office employees would not receive the same wages as the store employees because of the job differences. Edwards also testified that Gold stated that if the Union won the election he would have to negotiate with the Union over the benefits; he said that the employees should not expect the package plan they then had because bargaining would start from ground zero; he said that wasn't it nice that Respondent pays part of a $5,000 dental bill, "we don't guarantee anything that we have now, that he could be very hard and tough on the employees," and "don't expect what we have now"; Gold also said that all benefits would be negotiable. Edwards testified that Gold then said that if no agreement was reached the employees could go out on strike, but there was no guarantee that they would all get their jobs back. He also said, according to Edwards' testimony, that Respondent didn't want to be the first one to have a union in their office and that they would go to any measures to keep it out; he also told the employees that although they were due for a raise, their wages would be frozen until after the election. He concluded the speech by saying that the employees did not need a union to get the best Respondent had to offer.

Medaska, who did not attend Gold's January 9 meeting because she was terminated by Respondent later in the day on January 4, does not remember the term "ground zero" being used by Gold in his January 4 speech.

Gold testified that at this speech he discussed the employees' benefits, including dental benefits, but without any specific emphasis, but he never told the employees that they had better get their dental work done at that time because they would have to pay for it themselves if the Union won the election, nor did he ever threaten to freeze the employees benefits if the Union won the election. He testified that he informed the employees that all benefits were negotiable; he never said that benefits would be frozen or lost, and never used the phrase "ground zero." As regards the timeclocks, he testified that he informed the employees "that it was possible that if the Union won, the same as we had time clocks in the stores, it could be possible that there would be time clocks in the office." He testified that he never told the employees that wages would be frozen if the Union won the election.

The prepared text that Gold had in his hand for his second speech which took place in the empty office across the hall from Respondent's office on January 9 is as follows:

> This is the last opportunity we're going to have to get together as a group before this Labor Board election tomorrow. I would like to discuss the mechanics of the election with you, and then get into some of the issues.
>
> First of all, the election will be conducted here at the office, in the vacant office across the hall, between 3:00 and 3:30 in the afternoon. It will be conducted by an official of the National Labor Relations Board, out of the Labor Board's Newark, New Jersey regional office. The Labor Board official will conduct this election by secret ballot, which means that no one will ever know how you voted.
>
> The election is going to be decided by a majority of those who actually show up at the polls and vote. There are no proxy ballots, and there are no absentee ballots. Therefore, if you want your voice to be heard, you have to show up in person at the polls and vote between 3:00 and 3:30 p.m. on Thursday, January 10. If you don't, your entire future might well be decided by someone else.
>
> When you go in to vote, there will be two employees present, one serving as an observer for the Company and one serving as an observer for the Union. The purpose of these observers is simply to identify the voters. There will also be a person from the Labor Board. All you have to do is give your name to the observers, who will check your name off the list. Then, the Labor Board person will give you a ballot, which you will take into the voting booth and mark. Make an "X" in one of the boxes; do not sign your ballot or make any identifying marks on it. Then fold the ballot, come out of the voting booth, put the ballot in the ballot box and leave. That's all you have to do. The ballots will be counted just after 3:30, and we should all know the results at that time.
>
> Now, let's talk a little bit about what this election is all about. It seems that Progressive Supermarkets is in the vanguard of the Union's organizational efforts among office employees. What is happening is that Local 1262 has decided that it wants to expand its membership to include, not just employees in the stores, but also office employees. What it has done is to send out letters to its stewards in the stores, asking the stewards to help "talk up" the Union among the office employees of the companies that they work for. I have here a copy of just such a letter [At this point, hold up a copy of the Union's "Stewards Newsletter"]. Enclosed with this letter was this leaflet [At this point, hold up a copy of the leaflet], which is what the Union has been distributing to office employees. I don't know whether any

of you have gotten one of these leaflets, but if you haven't, this is what it looks like.

It's really sort of funny, and somewhat hypocritical, for Local 1262 to be telling office workers like yourselves that it has the "strength, unity and bargaining experience" to enable it to succeed as the bargaining agent for office workers where others have failed. Why have others failed? Well, the Office and Professional Employees union failed in New Jersey among office workers because Local 1262 broke that union. You don't have to believe me; I have copies of a 1970 newspaper article all about the strike that occurred at Local 1262's headquarters. Here are copies of that article [At this point, distribute copies of the Star-Ledger article]. This article tells how the strike began in August, 1970, but it doesn't tell how the strike ended. The strike ended in October, 1970 with the office workers union giving up and offering to have the employees abandon the strike and return to work. However, Local 1262, which knows how to do things like this, had permanently replaced all the strikers. As a result, not all of the strikers got their jobs back; most of them were permanently replaced and had to wait a long time to get back to work.

What was the strike over? Well, the article says the office workers wanted more money and the Union wasn't about to give it to them, because Local 1262 felt that it was paying its employees a fair wage. The last couple of paragraphs of the article sum it up pretty well [At this point, read the last two paragraphs of the Star-Ledger article].

Now, we're in pretty much the same position that Local 1262 was in back in 1970. We think that we are treating our office employees just as fairly and just as well as we possibly can. Your fringe benefits are every bit as good as what the store employees have, and in some instances your fringes are even better. As far as your salaries are concerned, those salary rates are competitive with what other employers pay office employees in this area. I'm not going to kid any of you into saying that your salary rates are as good as the salaries for 40 hours for store employees. But your rates are a lot better than the union rates for non-food employees in the stores, and your pension is a lot better than the non-food pension that Local 1262 has for its non-food and store employees.

What I am saying to you is that Local 1262 itself recognizes that there is a distinction between food employees and non-food employees in the stores, and we agree. That distinction is equally true between store employees and office employees. Working in an office is a lot more pleasant than working in a store. In a store, employees stand on their feet, have to load and unload merchandise, have to stand at cash registers, have to work nights and weekends, and generally have a far less pleasant job life than you here in the office. That distinction in job requirements reflects itself in the rate of pay. Office employees generally earn less than blue collar store employees. I'm not looking down my nose at those store employees, by any stretch of the imagination. And if any of you are really interested in doing store work, I would certainly do my very best to accommodate any of you who would like to go out into a store. I'm sure, however, that there aren't many of you who would like to do that.

It's just a bit unfair for you to expect that you are going to get all the benefits of the store employees when you have none of the burdens of those employees.

If the union is telling you that it will get you store pay in the office, it is really misrepresenting the facts. There's no way in the world that we can afford to pay store rates in the office, and there is no way in the world that we would pay store rates in the office.

As it has been explained to you before, if the union were to get in here, all we would have to do is to sit down and negotiate in good faith with the union. We would be under no obligation to agree to any union demand; all we would have to do would be to negotiate in good faith. If we could not reach agreement—if we refused to make any concessions—like Local 1262 did in 1970, the same thing that happened there could happen here. The union would be free to call you out on strike, and we would be free to permanently replace any employee who went out on strike. Ask the union how that is done; they really know.

I don't want to spend a lot of time reviewing your fringe benefits, except to say that your fringe benefits are every bit as good as the benefits the store emoloyees get, and in some cases they are even better. For example, you start getting two weeks vacation after one year of service, while in the stores employees have to work two years before they get two weeks of vacation pay. In the stores employees get ten days of sick leave; you get 12 days. Your medical insurance program, which includes dental and optical insurance, is better than the plan that the union has. And your pension plan is every bit as good as the store employees pension plan.

I'd like to talk about that pension plan for just a minute. Local 1262 has two pension plans, one for food employees and one for non-food employees. The food employees pension plan provides $14.00 to $16.00 a month of pension for each year of credited service. The non-food employees pension plan provides $5.50 a month of pension for each year of credited service. That's one third as much as the food employees get. Remember, as far as the union is concerned, you are non-food employees. It could be that if the union were to get in here, and it tried to get a non-food contract for you, you might lose some of the benefits you now enjoy. I don't know that that would happen, but I can tell you that it's a real possibility.

You don't need a union here to get the very best this Company has to offer. You don't have to pay $12.00 or $14.00 a month in union dues in order to

work here or in order to keep your jobs here. You don't have to pay dues to a union in order to get the very best this Company has to offer.

I hope that none of you will be fooled into making yourselves parties to the union's grandiose schemes to increase its membership. We have always treated you fairly, and we hope to be able to deal directly with you in the future and to continue to solve our problems together, without the intervention of outside parties that could bring strikes and unpleasantness here.

Now, if any of you have any questions, I'll be glad to answer them for you.

There's one other thing I want to mention before we end this meeting. Last week, we replaced two of the employees here. We replaced Mary Salink because we needed someone full-time for her job, and we hired someone. We also replaced Diane Medaska, who had resigned in December and had given us notice that she would be leaving the end of January. We had been looking for a replacement for Diane and we found one who could start this past Monday. So we called Diane in last Friday and told her that we were accepting her resignation as of that day. But because she had given us plenty of notice; we paid her through the end of the month. In other words, we gave her 3 weeks paid vacation. So Diane certainly wasn't hurt by what did.

It's true that she told us last Friday that she was thinking of staying beyond the end of the month, but unfortunately she didn't tell us that until after we had hired a replacement for her, and there simply wasn't anything we could do now.

I should tell you that the union is trying to make an issue out of this. It has gone to the Labor Board and has filed an unfair labor practice charge alleging that we replaced Mary and Diane because of their union activities. That's an outright lie, and the union knows it. But they're trying to use this as a campaign tactic. We don't plan to let them get away with it, and I hope that none of you will be fooled by this union trick.

Well, that's about all I have to say. I hope that you'll vote NO tomorrow and keep this a good place to work. Now, if any of you have a question, I'll be glad to answer it for you.

Evers testified that Gold told the employees that the salaries they received were fair and comparable for office work in the area and that even though it was less than Respondent paid its store employees, the work they perform was different; he also informed them of the strike by the Union's employees. Evers also testified that Gold said that if the Union won the election "we'd have to renegotiate everything. That we'd have to start from ground zero and renegotiate all our benefits . . . That he was the one who paid us our salaries and gave us our benefits and we would have to renegotiate everything." According to Ever's testimony, Gold also said "that we may have a time clock if we got the union in."

Plant testified that Gold had some papers with him, and he referred to these papers and read a few lines from them and elaborated on what he read; he told the employees of the strike by the Union's employees; that at the conclusion of the strike only a few of the striking employees were rehired and he passed out copies of newspaper articles about the strike. He then said that the election would be by secret ballot and to consider Respondent and vote no. He also told the employees that they were receiving good salaries and benefits which were comparable in the area. Plant further testified that Gold said that all a union wins in an election is the right to sit down and negotiate with a company; that you do not necessarily start from where benefits are, but that the Union would have to start from scratch, from ground zero to negotiate for the benefits the employees then had, that all the benefits were negotiable. Gold then mentioned dental benefits and "he said that if we were having work done on our teeth, we would have to pay for it ourselves, because that benefit would be frozen until the Union renegotiated for it." He also stated that if the employees went on strike they could be replaced. Plant also testified that Gold said that members of the Union that worked in the store had a timeclock which the office employees did not have, and if the Union won the election that could be put into effect.

Piper testified that Gold said basically the same thing that he said in his first speech; he began this speech by discussing the mechanics of the election and that it would be a secret-ballot election; that at one time the Union's employees went on strike and some of them had been permanently replaced. He then spoke about their benefits, that Respondent's contract with the Union differentiated between food and non-food employees, that there was a distinction between the work that store employees perform as compared to non-store employees and Respondent could not afford to pay its office employees the same as it paid its store employees. According to Piper's testimony, Gold also spoke about Respondent's obligation to bargain in good faith with the Union if it won the election, the permanent replacement of strikers, the Union's dues that the employees would have to pay, that Respondent had always treated them fairly and they did not need a union to bring strikes and unpleasantness to the office. Piper also testified that Gold informed the employees "that the stores have a time clock, and if we wanted to punch in, and punch out, then they could install a time clock if that's what it came down to," although he did not connect the installation of the timeclock with the Union winning the election.[8] Gold ended his speech by saying that Respondent had let Medaska go because she had given notice of her resignation, that they had obtained somebody to replace her and they had paid her through the time she had given notice for, and they felt they had treated her fairly.

Gerard testified that Gold referred to, but did not read directly from the notes he had with him. He began by explaining the secret-ballot procedure for the Board elec-

[8] On direct examination, however, Piper testified that Gold said, "there was no time clock now, but there was the possibility that if the Union came in there would be one installed." In answer to a question from me, she testified that Gold said that as the stores had a timeclock, there was a possibility that they could have one installed.

tion the next day. He then spoke about the Union and the strike in 1970 that Respondent's employees engaged in and that most of those striking employees did not get their jobs back immediately after the strike. He said that the employees salaries were comparable to that of other office employees in the area and their fringe benefits were as good, or better, than those of the store employees; he told the employees of the differences between food and nonfood work and wages, and that the Union, in its contract, recognized the difference. Gerard also testified that Gold said that if the Union won the election Respondent would have to sit down and negotiate in good faith with the Union, but that any benefits they had would be frozen. "They would start from ground zero to be renegotiated for. And if, for example, we had any dental benefits, they—the amount incurred would have to be paid for on our own, as they would be frozen . . . that benefits would start from ground zero . . . if the union got in." Gold also said that the wages would be frozen until the matter was settled. As regards the use of a timeclock, Gerard testified as follows regarding Gold's speech: ". . . was going over the fact that the people in the stores do have to punch and that we did not have to and that it could be arranged, and that we shouldn't vote for the union because—so that the office would remain on friendly and personal manner. He felt that the Union coming in would change . . . I recall him saying that we did not have a time clock now, but that could be arranged—that we could have one should the union prevail."

> Q. Isn't it true that when he talked about a time clock, he talked about it coming in, or that it could come in, in connection with negotiations with the Union.
>
> A. No.
>
> Q. He did not. It was totally apart from negotiations with the Union.
>
> A. Yes.
>
> Q. But if the Union won the election.
>
> A. Yes.

In answer to a question from me as to what Gold said regarding the circumstances under which a timeclock would be installed, she testified:

> A. Well we, right then, did not have to punch a time clock. And that we should consider the people that work in the stores do, and he said that that could be arranged for us.
>
> JUDGE BIBLOWITZ: Did he say under what circumstances?
>
> A. No. He just said that that could be arranged.

Gerard also testified that Gold said that they were the first office employees the Union was attempting to represent and he did not want to be first, and that they did not need a union and the payment of union dues to get the best Respondent had to offer. He ended by saying that they had replaced Medaska because she had resigned and they needed someone to replace her, that they had paid her through the end of January so she was not hurt by their actions.

Rinaldo, Packard, and Shally, on direct examination in answers to questions from counsel for Respondent, and in cross-examination, referred to this speech and the earlier speech together. Therefore, for a discussion of their testimony see *supra*, re the January 4 speech.

Edwards testified that Gold began the meeting by discussing the mechanics of the Board election to be conducted the following day. He told the employees of their excellent fringe benefits and the difference between store and nonstore employees and, regardless of what the Union was telling them, they should not expect the same rate of pay as the store employees receive because the office employees do not have to deal with the public. She testified that Gold said that if the Union won the election, Respondent would have to sit down with the Union and try to come to an agreement, and if they could not reach an agreement, the employees could strike, but there was no guarantee that their jobs would be available when they came back because they could be permanently replaced. Gold then spoke about the fringe benefits the office employees were receiving and he said that if the Union won[9] the election "that they could be frozen; that we'd have to start from ground zero as far as negotiations go." He also said, "at this point you're not punching in the time clock but you could be in the future." She also testified that Gold said that he knew that the employees were due for raises, but that they would be frozen until after the election. Gold ended the speech by saying that all the employees knew that Medaska was getting married and he felt that Respondent gave her a fair shake by asking her to leave at that time and that her replacement would be in on Monday.

For the discussion of what Gold testified he said, and did not say, in this speech, see the discussion, *supra*, re the January 4 speech.

Credibility Determination

In determining what was said by Cimini and Gold in these three speeches, it has been necessary to carefully scrutinize the testimony of all the witnesses to, and participants in, these speeches. After doing so, I have determined that the most credible witnesses in this regard were Piper and Gerard; their testimony was the most direct, they were the least evasive on cross-examination and had the least amount of contradictory testimony. I would therefore find that in his speech, Cimini did say, *inter alia*, that Respondent would do whatever it had to do in order to keep the Union out.

As regards Gold's first speech, I would find that he said, *inter alia*, that if the Union won the election, he would have to negotiate with the Union; everything was negotiable and that he would be tough; that in negotiations the employees would start from ground zero and everything would have to be renegotiated. There was a possibility that the Union would call a strike and Respondent could hire strike replacements and, if that occurred, the strikers might not get their jobs back immediately, but might have to wait until a vacancy occurred. I

[9] Edwards testified that Gold, in both speeches, used the expression "ground zero," but did not use the expression "start from scratch."

would also find that Gold said that anyone who had incurred bills using their dental plan would have to pay these bills on their own because these benefits would be frozen.

As regards Gold's second speech, I would find that Gold said, *inter alia*, that if the Union won the election, Respondent would have to negotiate in good faith with the the Union, but that any benefits they had would be frozen, that they would start from ground zero to be renegotiated for; that if the employees incurred any expenses for dental benefits they also would be frozen and would have to pay for it themselves. I would also find that Gold said, *inter alia*, that the employees' wages would be frozen until the matter was settled, that the employees in the stores punch a timeclock and there was a possibility that if the Union won the election they could have one installed, and that he also spoke about possible strike replacements as he had in his earlier speech.

VIII. INDIVIDUAL MEETINGS WITH EMPLOYEES

Gold conducted a number of individual meetings with employees; with Evers on January 4, and with a number of other employees on January 9 and 10.

Evers testified that after Gold's first speech he asked her to have a cup of coffee with him in the back room. The two of them went into the room and Gold said, "Tell me now, what's going on? What's happened? Why did you go to the union?" Evers told Gold that she did not start it, that it was a group effort of the employees who were dissatisfied with their working conditions. Gold asked why they did not go to Cimini, and Evers said that the employees will not go to Cimini because they had tried in the past and gotten nowhere. Gold asked her what the problem was, and she said that they were not concerned with their benefits, but they were dissatisfied with their salaries, the demands that they work overtime, and the days they had to stay in the office during their lunch hour to answer the telephone. Gold mentioned that Evers had worked for Respondent for a long time and asked: "Why can't you help me with the girls?" (Although he did not explain what he meant.) Gold then said that it did not seem like a big problem to him, to go to the Union, that they could easily be taken care of and "maybe we can have a meeting once a month and discuss the problems of the office."

Plant testified that about a half hour after Gold's second speech Cimini asked her to see Gold in the new office across the hall, which she did. At this meeting, attended only by her and Gold, he told her how good Respondent's benefits were and that she should consider Respondent when she voted the following day; that she should not be fooled into believing that if the Union won the election they would start from where they were and go one step better; they would have to start from scratch, ground zero and renegotiate each one of the benefits they had. Gold then asked her why she thought the Union had gotten involved in Respondent's office and Plant answered that the employees were unhappy because the increased amount of work had required the employees to work overtime. Plant testified that on the following day, prior to the election, Cimini again asked her to see Gold in the office across the hall. Again, the two were alone and Gold said that the reason he called her back was that he had forgotten to mention the day before that nobody should worry about losing their jobs because of the union matter. Plant then asked Gold to explain what he meant by her benefits being frozen, which, she said, meant to her that she was losing them. Gold's answer was that yes, she could say that she would be losing them; they would have to renegotiate for those benefits—some you may get back and some you may not.

Following Gold's first speech, Piper was called into a private meeting with Gold. Piper testified that Gold asked her if she had thought about what was taking place and if she had made up her mind, she answered that she had been thinking about it, but not anything definite. Gold then asked her if she would be afraid to discuss any problems she had with Cimini and she said that she would not. The following day, prior to the election, Piper was again called into a private meeting with Gold in the new office space across the hall. Gold asked her if she made up her mind as to how she was going to vote; he told her that he did not want her to tell him, he just wanted to know if she had decided. Piper told Gold that she had not decided; that she would weigh both sides and do what was right for herself. She also told Gold that she and a lot of the other girls were afraid of losing their jobs whether or not the Union came in, and Gold told her that everyone's job was secure, that they had nothing to worry about. Gold then said that after the election there might be some unpleasantness in the office because one party would be unhappy that it lost the election, but that would pass. Gold also told Piper that the election would be close, but he felt Respondent would win.

Shortly after Gold's second speech, Cimini asked Gerard to go into a private meeting with Gold in the new office across the hall. He spoke about the employees' benefits and asked if she had been harassed or pushed into making a decision about the Union and she said she had not. Gold then informed her that their benefits would start from ground zero and would have to be negotiated for; he also informed her that if the Union lost the election he would try to hold meetings once a month to go over the problems the employees were having and see if he could work something out. The next morning Gerard was again called into a private meeting with Gold in the new office across the hall. He reminded her that she was still employed on a trial period and he hoped that she would still be there when the trial period was over; he discussed the employees' benefits, said that the employees did not need the Union, and that he hoped that she would consider Respondent when she voted, so that the office would remain in a friendly and personal manner.

Gold testified that after his second speech he met individually with most of the employees; he told them that he thought Respondent had been treating them fairly and he hoped they would give Respondent consideration in the matter. He testified that he never asked the employ-

ees what their problems were, nor did he ask any employee how she was going to vote in the election.

As regards the above conversations, where there are conflicts I would credit the employees' testimony over that of Gold. As will be discussed further, *infra*, I do not find Gold to be a credible witness. His testimony is contradictary, in places, and he was extremely evasive during examination by the General Counsel. The employees, on the other hand, generally, testified in a direct and straightforward manner on both direct and on cross-examination. Although I may not have fully credited their testimony in other situations, *supra*, I would credit their testimony herein over Gold's denials.

IX. SPLIT LUNCHES AND NEW LOUNGE

Until January, Respondent had a system by which all employees, except one, would have their lunch hour from 12 to 1 p.m.; the employee who did not get her lunch hour would spend that hour answering all telephone calls to Respondent's office. The employees alternated on this "telephone day" so that each employee performed this task about once every 2 weeks, and they were not paid for this time spent in the office; not surprisingly, the employees were not happy with this procedure. In early 1979, an employee named Cindy Pisani asked Cimini if he could institute a split lunch program so that half the employees would take their lunch between 12 and 1 p.m. and the other half between 1 and 2 p.m., thereby obviating the necessity of having one employee remaining, on her own time, to answer the phone. Cimini informed her that he had previously tried split lunches, but that it did not work out well because some of the employees ate lunch at their desks and spoke among themselves and the noise made it difficult for the other employees to work at their desk at the same time.

Shortly thereafter, Cimini discussed with the landlord of Respondent's office location the possibility of Respondent obtaining additional space in the building, but nothing was available at the time. About September 1979, a room across the hall from Respondent's office became available and Respondent entered into an oral agreement with the landlord to rent this office.[10] Cimini testified that, about that time, he made an announcement to all the office employees that Respondent had obtained this new office space and that either it would be used as a lounge for the employees, or desks and machinery would be put in the new office space and an employee lounge would be set up in the original office. The employees had their Christmas party in this new office (albeit without any new furniture) and the election was conducted in this new office.

In late January, after the election, the employees' lounge was set up with the coffee machine from the old machine-break room, couches, table, and chairs (together with some office machines in the rear of the room separated by a divider) in the new office space across the hall, and the employees began using it at that time; at the same time, Respondent instituted the split lunch program, thereby obviating the need for the unpopular telephone day. The General Counsel, although conceding that the acquisition of the new office space preceded the advent of the attempted organization of Respondent's employees by the Union, alleges that Respondent did not definitely determine that this space was to be used as a lounge for the employees until after the Union's appearance, and was therefore a granting of a benefit to the employees to induce them to withdraw their support from the Union. It is therefore necessary to examine the testimony of the employees as to what they were told regarding the lounge.

Evers testified that Cimini informed her about Respondent's acquisition of this office space prior to the petition having been filed in this matter, but that he had not decided what would be done with the space—an employee lounge was mentioned to her as one of the possible uses of the space about a month prior to the election. Branca testified that although she knew that Respondent had acquired this space prior to the advent of the Union at Respondent's office, it was not until after the election that Respondent decided to use this space as a lounge for its employees. In December, however, Cimini told her that there would be a lounge for the employees and that it would be taken care of when the auditors left Respondent's premises at the end of January. Plant testified that she first learned that Respondent had acquired the new office space in early fall of 1979, but that the alternative that Cimini listed for the use of this space was to make it into a file room, installing the computer there, or transferring accounts payable or payroll to the new room; Plant does not recall Cimini saying anything about a lounge being there until January.

Piper testified that she was informed of Respondent's acquisition of the space prior to November, but cannot recall any discussions by Gold or Cimini regarding the uses of this room. Rinaldo testified at some length on this subject, but her testimony came down to this:

> Q. Prior to November 16, had Mr. Cimini said there would be a lounge somewhere with tables and chairs?
>
> A. Yes.
>
> Q. And he wasn't sure whether it was going to be across the hall or in the old room or where?
>
> A. Right.

Packard testified that about September 1979 she was informed that Respondent had acquired the additional office space and that either an employee lounge would be set up there or the machine-break room would be altered, expanded, and converted to a lounge for the employees. Shally testified that about a week prior to November 14 Cimini informed her that as soon as the auditors (who were there at the time) left Respondent's premises Respondent would fix up the new office as a lounge for the employees.

As stated above, the parties stipulated that Respondent acquired the additional office space prior to the Union's attempt to organize Respondent's employees. On the basis of the above testimony, I would find that also prior to the Union's appearance Respondent informed its employees that it would set up a lounge for them (without

[10] The parties stipulated that this space was acquired by Respondent long before the Union's appearance in November.

specifying what furniture would be in the lounge) either in the newly acquired space or in the old machine-break room, which would be expanded for the purpose.

X. THE WAGE INCREASES

The record establishes that Respondent has generally granted wage increases to its employees in January. The election herein was conducted on January 10. In February, Respondent announced and granted to all its employees a $20-a-week wage increase retroactive to January 14. The General Counsel alleges two violations in this regard: one for withholding its annual increase from January to February, and the other[11] for granting an increase in an amount significantly greater than those granted in the past, all, allegedly, to discourage support of the Union.

Respondent prepared a summary of the wage increases which were granted to its employees since 1975 (G.C. Exh. 11). Of the 11 employees listed as being employed in 1975, 1, who began her employment in April received a $5 increase in that year, 4 received $10 increases, 1 received a $15 increase, and 5 received $20 wage increases. In 1976, three employees received $10 increases, four received $15 increases, two received $20 increases, and two received $25 increases. All of the above wage increases were granted to the employees either in January or 3 months after they began their employment with Respondent. In 1977, the following wage increases were granted, together with the month in which they were granted: $15 and $20 in April and December; $10 in June; $5 and $20 in May and December; $25 in July; $15 in April; $10 and $5 in April and July; $10 and $20 in April and July; and $10 and $5 in April and July. The wage increases in 1978 were: $20 in July; $20 in January; $20 in July; $15 and $10 in January and July; $15 and $10 in January and September; $10, $10, and $10 in January, April, and July; in January and July; $10 in January; and $20 in January. In 1979, the wage increases were generally granted in January and July; Shally received $15 and $20; Evers, $10 and $15; Rosemary Scalfani, $15 and $20; Rinaldo, $10 and $15; Plant, $10 and $20; Packard, $15 and $20; Piper, $10 and $25; and Medaska, $10 and $15 (Piper's and Medaska's increases were granted in March and July, presumably because they commenced their employment with Respondent in November and December 1978, respectively). Edwards, who began her employ in May 1979, received $15, presumably 3 months later.

Respondent's position is that the wage increases were not granted in January because that was when the election was conducted and their attorney informed them not to grant wage increases at that time because it might be considered as a bribe to the employees. By February, however, some of the employees had become "edgy" about the absence of the wage increase.[12] At this time, the Regional Office of the Labor Board was investigating the Union's unfair labor practice charge and objections in this matter. According to counsel for Respondent (and stipulated to by the General Counsel), he met with the Regional Office representative on two occasions regarding the investigation of this charge and the objections—the first time at the end of January, when Cimini was questioned, and again on February 8 when both Cimini and Gold were questioned. As stated by counsel for Respondent: ". . . it became readily apparent to me that this matter was going to go to a hearing, because there were serious credibility issues. I also know, which is common knowledge, of the backlog with the Administrative Law Judges, and its going to take a few months to get a hearing."

On the basis of that, counsel for Respondent instructed Respondent to grant the increases and make them retroactive to January, and on February 18 he wrote to counsel for the Union, informing him of the increases and the reason, as stated above.

Respondent explains that the increase was retroactive to January because that is when the employees would have received the increase, if not for this pending matter, and that everybody was given the same increase because Respondent did not have an opportunity to review the employees' performance and grant a corresponding merit increase, as they had done in the past.

XI. THE MEDASKA TERMINATION

Medaska began her employ with Respondent in November 1978; she was admittedly a good employee. About the beginning of December, Medaska informed Cimini that she would be leaving Respondent's employ at the end of January when she was to get married and move to Florida. About mid-December, Medaska told a number of the employees, including Supervisor Branca, that there was a possibility that she would not be getting married and would be remaining at her job, but that she was not sure and would not know for sure until she returned from vacation, at which time she would inform Branca one way or the other.[13] While Medaska was on her vacation, Cimini informed Branca that he was looking for someone to replace Medaska and Branca told him that before she left for her vacation Medaska was unsure of what she would do and there was a possibility that she would be coming back. (Cimini admits that Branca told him this and testified that he told Branca to inform Medaska to speak to him because he was looking for her replacement.) Cimini said that as far as he was concerned Medaska had told him that she was not coming back, and he had to plan for the future and look for another employee.

Medaska returned from her vacation on Wednesday, January 2. Although Medaska had made up her mind to

[11] Pursuant to an amendment of the complaint at the hearing.

[12] In fact, Evers testified that in her discussion with Gold on January 4, she informed him that she was disturbed that she had not gotten a raise.

[13] Medaska testified that before she left for her vacation during the Christmas to New Year's week she definitely decided that she would remain in Respondent's employ and informed Branca of this decision. Branca testified, however, that Medaska did not inform her that her marriage plans were off and that she would definitely remain in Respondent's employ until after she returned from her vacation. Although not crucial to the issue, I would credit Branca in this regard, as her memory appears superior to that of Medaska.

remain in Respondent's employ, she was nervous about informing Cimini of her decision and did not attempt to speak to him until late in the afternoon of Friday, January 4, although Branca told her that she had told Cimini that she was unsure about leaving and encouraged Medaska to speak to Cimini. At that time, Medaska informed Cimini of her decision to stay and Cimini told her that it was too late because he had already located another employee who was capable of performing the work and did not want to let the opportunity pass. Cimini then took out of his desk a prepared check for Medaska's salary through January 28 (she had earlier that day received her regular paycheck for the week). Medaska said that she could not believe that he was going to let her leave since she wished to continue working, and that it was quite a coincidence that he was letting her go 1 week before the election. Cimini said that it had nothing to do with it, Medaska told him that Branca had informed him that she would not be leaving, and Cimini said that he knew nothing about it and would continue with his previous plans.

Before leaving the office, Medaska met Respondent's president, Margolis, who asked if she were alright, she said that she was, and he asked if he could do anything for her. Medaska answered no, since the new employee had already been hired. Margolis then said that she should understand the position of Respondent, that they were set up; Medaska asked him what he meant and he said that the employees do not understand how much Respondent pays for their benefits. Medaska then informed Margolis that the employees were not upset about the benefits, but about their wages and Cimini.

Medaska left this meeting and began clearing out her desk; Evers noticed that she was crying, asked her what was wrong and Medaska said that Respondent had paid her off until the end of the month and it was her last day. As Evers was leaving the office, she met Gold and asked to speak to him. They went to Gold's office and were joined by Cimini and Margolis. Evers' uncontradicted testimony is that she asked why they let Medaska go when she wanted to stay and Cimini knew it. Gold said that she had told them that she would leave at the end of the month and he paid her for that period; he asked what she would do and Evers said she would have kept her. Gold said that he had already hired somebody else. Evers answered, "but isn't it sensible to keep her? She was a good employee, she was a very likeable girl, we liked her very much and it will cost money to hire somebody else and train them." Gold then said, "Well, I have to do everything I can to save my company" and Evers said, "What you're saying then, is that you are doing it for the vote" and Gold said, "do you blame me?" Evers then said, "Well, you do what you have to do." They then began discussing the benefits Respondent was giving its employees and the meeting ended.

Respondent's position regarding the termination of Medaska on January 4 is as follows: when she gave Cimini the notice in early December that she would be leaving Respondent's employ at the end of January they began to look for a replacement for her. Because it was the holiday season they could not locate a replacement. Sometime during the week after Christmas (when Branca informed Cimini that Medaska was "up in the air" about leaving) Gold contacted Joe Greenblatt, a man he knew, who was the controller of Consolidated Supermarkets, herein called Consolidated, and asked him if he could recommend any employee whom Gold could hire to replace Medaska. Greenblatt told him that he had employee Karen Gordon who performed the same type of work as Medaska. Cimini went to Consolidated's office, interviewed Gordon, and hired her to begin on January 7. Gordon remained in Respondent's employ for about 2-1/2 weeks, left without any explanation to Respondent, and returned to her former position at Consolidated. While employed at Respondent, Gordon was paid $175 a week.

Consolidated's payroll records establish that just prior to Gordon's brief employment at Progressive she was paid $5 an hour by Consolidated. Gordon testified, and Consolidated's payroll records further establish that, during her brief employment at Respondent, in the evenings she voluntarily returned to Consolidated's office to perform some of her regular work there; for the week ending January 12 she worked 5 hours at regular time and 17.25 hours of overtime at Consolidated; for the weeks ending January 19 and January 26 these figures were, respectively, 5 and 18.75, and 19 and 15.50.

Gordon testified that just prior to the events in question she had been employed by Consolidated for 2-1/2 years. Shortly before she was interviewed by Cimini, Greenblatt called her into his office and told her that Progressive was short-handed and needed someone in the office and would she help out until they found someone else. Greenblatt told her what work she would be performing at Respondent, but she was not sure whether he informed her of the wages she would be receiving or any other benefits. When asked on direct examination if she were given any choice about going to Respondent, Gordon answered: "I was asked to go. I don't question what my boss asks me to do. If he asks me to go, I go."

> Q. Did you apply for a job at Progressive?
> A. No.
> Q. Did you interview for the job in anyway, like you would for any other job you might apply?
> A. No.
> Q. What did Mr. Cimini say to you?
> A. He asked if I was qualified, if I knew the work.
> Q. And what did you tell him?
> A. Yes.

Gordon later testified that she did not believe Cimini asked her anything else during this interview, nor did anybody ask her if she would be available for employment at Respondent at the end of January, rather than the beginning of January; Cimini admits this.

After approximately 2-1/2 weeks' employment at Respondent, Gordon called in sick at Respondent because it was too long a trip from her home; she lived approximately 5 minutes' distance from Consolidated, and approximately 45 minutes from Respondent, and Cimini was aware of this. She then called Greenblatt and told him that she could not travel anymore. Greenblatt told

her that he would find out about it and called her back and told Gordon that she could continue her work at Consolidated.[14]

On cross-examination, Cimini testified as follows regarding Gordon's sick leave absence from Respondent:

> Q. . . . did you attempt to reach Karen Gordon to find out what the problem was?
>
> A. No, I did not.
>
> Q. You had her home phone number, didn't you?
>
> A. Right.
>
> Q. But you made no effort to contact her? She just didn't come to work for a few days. She called in sick one day, and yet you made—you just assumed that she didn't want to work there anymore, correct?
>
> A. Correct.

Cimini testified that during the period in which Gordon was employed by Respondent he continued to look for a replacement for Medaska. He also testified that he hired a new employee to replace Medaska and Gordon "right after Karen left." He also testified that the reason he did not rehire Medaska after Gordon left (or keep her in Respondent's employ on January 4) was because she was always changing her marriage plans and she therefore was not dependable enough, although he admitted that Medaska's notice of leaving in December was the only notice she had ever given Respondent.

Probably the most interesting question in regard to Medaska's termination is why, on January 4, when Cimini was informed by Medaska that she changed her plans and wished to remain in Respondent's employ, it did not cancel Gordon's employment or, at least cancel it until January 28, her original notice date, especially since they paid Medaska up until January 28. Cimini and Gold's answers were simply that they had a "commitment" to Gordon. Cimini, on cross-examination, was asked:

> Q. You're telling me, then, that you thought that because you had told Karen Gordon to start working the following Monday, that there was no way that you could change that. That was irreversible?
>
> A. No, it wasn't irreversible.

The corollary question is why, since Respondent paid both Medaska and Gordon for the last 3 weeks in January, it did not at least keep Medaska in its employ for that period. Respondent's answer to this was the lack of space at Respondent's premises; although the office was very busy at the time, there was no room for an additional employee. When it was pointed out to Gold that Respondent, at that time, had the new additional space across the hall, he testified that it was not proper for the purpose since new telephone lines would be needed if an employee were placed there.

I do not credit Gold and Cimini's version of Medaska's termination. I found Gold, and to a lesser degree Cimini, not to be credible witnesses. Gold's testimony was often contradictary, his answers to the General Counsel's questions were often evasive and hostile, and, generally, his testimony, and that of Cimini regarding Medaska's termination, was implausible; for example, why was Respondent in such a hurry to obtain a replacement for Medaska at the end of December after Branca had informed Cimini that Medaska was "up in the air" about leaving? Even if Medaska did leave, it would not be for another month, presumably when it would be easier to locate a replacement, being after the Christmas season; in addition, Medaska's replacement, Gordon, who had been employed by an acquaintance of Gold's, never applied for the job, but "was asked to go" to Respondent by her employer, Consolidated, had only a *pro forma* interview by Cimini, earned less at Respondent than she had been earning at Consolidated, continued to do substantial work in the evenings at Consolidated during the brief period of her employment at Respondent, had to travel 45 minutes to her employ at Respondent rather than the 5-minute commute to Consolidated (which Cimini was aware of), and was never asked if she would be available to begin working for Respondent at the end of January. Also especially revealing is the fact that after Gordon called in sick during the third week of her employ at Respondent, and never returned there without any explanation to Respondent, Cimini never attempted to contact her to find out if she would be returning, together with the fact that even during the brief period of Gordon's employ at Respondent Cimini continued to look for a permanent replacement for Medaska. Additionally, as Respondent's office was very busy at the time of Medaska's termination, it is difficult to understand why, even if it had a "commitment" to Gordon, Respondent could not place Medaska in the new office across the hall, with or without a telephone. (If Respondent was able to arrange an employee lounge shortly thereafter, it could certainly have arranged to have a telephone installed there a few weeks earlier for Medaska or Gordon). Also puzzling is why Respondent never contacted Medaska to return when Gordon left its employ after only 2-1/2 weeks. Finally, sealing this matter was Gold's answer to Evers—"do you blame me?"—when she asked him if he was terminating Medaska for her vote 6 days later? All of these factors lead to the inescapable conclusion that Respondent precipitously terminated Medaska to prevent her from voting in the upcoming election.[15]

XII. ANALYSIS

I have found that Gold, in his two speeches to the employees on January 4 and January 9, said *inter alia*, that if the Union won the election he would have to negotiate with the Union and that he would be tough; everything was negotiable and that in the negotiations employees would start from ground zero and everything would have to be renegotiated; any benefits they had would be frozen and that their wages would be frozen until the matter was settled. I would also credit Plant's testimony regarding her private meeting with Gold on January 10

[14] One week after returning to Consolidated's employ, Gordon received a 7-1/2-percent wage increase.

[15] I make this finding being aware that there was no definite proof that Respondent was aware that Medaska was one of the prounion employees.

where he informed her of what he meant by saying that the employees' benefits would be frozen, which, to her, meant that she was losing them; that yes, she could say that she would be losing them; that they would have to renegotiate for those benefits—some they may get back and some they may not.

There have been numerous cases recently on the legality of statements such as Gold's "ground zero" statements herein. The question is whether, under Section 8(c) of the Act, they are lawful statements explaining to the employees the mechanics of bargaining or are unlawful threats of withdrawal of benefits should the employees choose the Union as their collective-bargaining representative. In *Coach and Equipment Sales Corp.*, 228 NLRB 440 (1977), the Board stated:

> "Bargaining from scratch"[16] is a dangerous phrase which carries within it the seed of a threat the employer will become punitively intransigent in the event the union wins the election. The Board has held that such "hard bargaining" statements may or may not be coercive, depending on the context in which they are uttered. Thus, where a bargaining-from-scratch statement can reasonably be read in context as a threat by the employer to unilaterally discontinue existing benefits prior to negotiations, or to adopt a regressive bargaining posture designed to force a reduction of existing benefits for the purpose of penalizing the employees for choosing collective representation, the Board will find a violation. Where, on the other hand, the clearly articulated thrust of the bargaining-from-scratch statement is that the mere designation of a union will not automatically secure increases in wages and benefits, and that all such items are subject to bargaining, no violation will be found. A close question sometimes exists whether bargaining-from-scratch statements constitute a threat of economic reprisal or instead constitute an attempt to portray the possible pitfalls for employees of the collective-bargaining process. The presence of contemporaneous threats or unfair labor practices is often a critical factor in determining whether there is a threatening color to the employer's remarks.

In *Plastronics, Inc.*, 233 NLRB 155 (1979), the Board stated that statements which indicate that collective bargaining "begins from scratch" or "starts at zero:"

> . . . are objectionable when, in context, they effectively threaten employees with the loss of existing benefits and leave them with the impression that what they may ultimately receive depends in large measure upon what the Union can induce the employer to restore. On the other hand, such statements are not objectionable when additional communication to the employees dispels any implication that wages and/or benefits will be reduced during the course of bargaining and establishes that any reduction in wages or benefits will occur only as a result of the normal give and take of collective bargaining.

Gold's statements to the employees herein regarding negotiations went beyond the permissible limits. Prior to these speeches Cimini, in his speech, informed the employees that Respondent would do whatever it had to do in order to keep the Union out. In addition to Gold's statements regarding negotiations starting from "ground zero" he informed the employees that if he had to negotiate with the Union, the employees' benefits would be frozen, and that their dental benefits would be frozen and they would have to pay for any dental expenses on their own. He also informed the employees that their wages would be frozen until the matter was settled. This, together with his above-mentioned statement to Plant and Respondent's numerous comments to the employees in its letters and speeches about strikes and strike replacements[17] and the other 8(a)(1) and (3) violations discussed and found, *infra*, convince me that Gold's references to negotiations beginning from "ground zero" were more than simply an explanation of the processes of collective bargaining; rather they were threats to take action detrimental to the employees should they choose to be represented by the Union, and thereby violated Section 8(a)(1) of the Act.[18] I would likewise find that Gold's statements regarding the employees' wages and benefits being frozen were unlawful threats within the meaning of Section 8(a)(1).

Additionally, I find that Gold's statements in his speeches that anyone who incurred bills using Respondent's dental plan would have to pay these bills on their own because these benefits would be frozen, and that there was a possibility that if the Union won the election a timeclock could be installed both violate Section 8(a)(1) of the Act. Both statements were made in the context that all benefits would have to be renegotiated, would be frozen, and would start at ground zero, if the Union won the election and Respondent had to negotiate with the Union. As stated in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 618 (1969):

> If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. . . . [As] stated elsewhere, an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition." *NLRB* v. *River Togs, Inc.*, 382 F.2d 198, 202 (2d Cir. 1967).

[16] I consider "bargaining from scratch" and "start from ground zero" to be synonymous.

[17] I have found, *infra*, that Respondent's numerous references to strikes and strike replacements in its letters and speeches do not, in themselves constitute a violation of Sec. 8(a)(1) of the Act.

[18] *South Hills Health System*, 240 NLRB 69 (1979); *Buckeye Tempo Gamble-Skogmo, Inc.*, 240 NLRB 723 (1979); *TRW-United Greenfield Division*, 245 NLRB 1135 (1979).

That is the situation herein; it was the threat to take action solely on its own initiative should the employees choose the Union as their collective-bargaining representative in the upcoming election. It was not a prediction ". . . carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . ." *Gissel, supra*. Both statements therefore violate Section 8(a)(1) of the Act.

Although I have found, *supra*, that Gold's references to negotiations starting from "ground zero" violate Section 8(a)(1) of the Act, I would find that Respondent's statements about strikes and strike replacements in its letters and speeches do not violate Section 8(a)(1) of the Act. All Respondent's letters, except the last, and both of Gold's speeches clearly refer to Respondent's right to hire permanent replacements for employees who engage in a strike. But this is not a situation where Respondent informed its employees that it would not bargain with the Union or would never sign a contract with the Union. Gold informed the employees that if the Union won the election he would have to negotiate in good faith with the Union. Although he did say he would be tough, he said that he would negotiate.[19] Additionally, he never foreclosed the possibility of reaching an agreement with the Union; he referred to the *possibility* of the Union calling a strike.[20] Further, Respondent's reference to the fact that economic strikers can be permanently replaced is a correct description of the law. Although the speeches and letters repeated this message on numerous occasions during the preelection period, I would find that these statements are lawful under Section 8(c) of the Act and therefore do not violate Section 8(a)(1) of the Act.

As regards Gold's individual meetings with the employees, I would find his questioning of Evers—"tell me now, what's going on? What's happened? Why did you go to the Union?"—to be interrogation in violation of Section 8(a)(1) of the Act. There could have been no lawful purpose to the inquiry with the election only 6 days away, Evers was given no assurances against reprisals, there was, as is true with all interrogation of this sort, a lack of anonymity, and Respondent engaged in numerous other unfair labor practices during this period.[21]

I would also find that Gold by his statement to Evers on January 4, "maybe we can have a meeting once a month and discuss the problems of the office" impliedly promised to correct grievances in the future if the Union were defeated in the upcoming election, in violation of Section 8(a)(1) of the Act.

In *Uarco, Incorporated*, 216 NLRB 1 (1974), the Board stated:

> the solicitation of grievances at preelection meetings carries with it an inference that an employer is implicitly promising to correct those inequities it discovers as a result of its inquiries. Thus, the Board has found unlawful interference with employee rights by an employer's solicitation of grievances during an organizational campaign although the employer merely stated it would look into or review the problem but did not commit itself to specific corrective action; the Board reasoned that employees would tend to anticipate improved conditions of employment which might make union representation unnecessary. However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

In *Uarco, supra*, the Board found no violation because the employer rebutted the inference by repeatedly informing the employees that it could make no promises regarding the grievances raised.[22] Additionally, the Board found the record devoid of any showing of union animus or concurrent unfair labor practices on the part of the employer.

In *Merle Lindsey Chevrolet, Inc.*, 231 NLRB 478 (1977), the employer, a few days after the Union began its organization drive, informed his employees that he "wanted to find out what kind of problems they were having" and that he "would talk to them concerning such problems." The Board, quoting the above-mentioned language from *Uarco, supra*, found a violation of Section 8(a)(1), stating: "In the instant case, there is no evidence that Respondent made any statement or took any action to establish that it was not promising to remedy grievances and we therefore find that Respondent did not meet its burden of rebutting the inference."

In the situation herein, Gold asked Evers what the problems were, and after she informed him of them he said that it did not seem like a big problem and that they could easily be taken care of; he then suggested the monthly meetings to discuss the office problems (without making any "no promises" statement.) This was clearly an implied promise to correct the employees' grievances in the future in exchange for the defeat of the Union, a violation of Section 8(a)(1) of the Act.

As regards Gold's individual meetings with Plant, I would find that his statements to her regarding benefits starting from ground zero and being renegotiated if the Union won the election, together with his statement that she would be losing some benefits—some she may get back and some she may not—violate Section 8(a)(1) of the Act for the reasons stated, *supra*. During the individual meeting with Plant on January 9, Gold also asked her why she thought the Union had gotten involved in Respondent's office. Although this interrogation did not

[19] *The Tappan Company*, 228 NLRB 1389 (1977).

[20] *Richard Tischler, et al. d/b/a Devon Gables Nursing Home*, 237 NLRB 775 (1978).

[21] *Struksnes Construction Co., Inc.*, 165 NLRB 1062 (1967); *Solboro Knitting Mills, Inc.*, 227 NLRB 738 (1977), enfd. as modified 572 F.2d 936 (2d Cir. 1978); *Bourne Co.* v. *N.L.R.B.*, 332 F.2d 47 (2d Cir. 1964).

[22] See also *Tiffin Division of Hayes-Albion Corporation*, 237 NLRB 20 (1978), where the Board found no violation in the employer's soliciting grievances and questions at meetings with employees, since the employer took a no "promises" position at these meetings.

directly question Plant's union sympathies, I would find that it violated Section 8(a)(1) of the Act as the question served no valid purpose with the election only 1 day away and took place in the context of other unlawful statements made by Gold to Plant.[23]

I find that Gold's statements to Piper came within the protection of Section 8(c) of the Act.

Gold's statement to Gerard on January 9 regarding benefits starting from ground zero is a violation of Section 8(a)(1) for the reasons stated, *supra*. In addition, his statement to Gerard that if the Union lost the election he would try to hold meetings once a month to go over the problems the employees were having and see if he could work something out is an implied promise to correct the employees' grievances in the future if the Union lost the election, in violation of Section 8(a)(1) of the Act, *Uarco, supra*. On the next morning (the day of the election) Gerard was again called in to speak to Gold and he reminded her that she was still employed in her trial period and he hoped that she would still be there when the trial period was over. It requires no case citation to find (as I do) that an employer violates Section 8(a)(1) of the Act when he makes such a statement which could have no other purpose than to serve as a threat to the employee.

I find that the General Counsel has not sustained his burden of establishing that Respondent instituted the split lunch program and established the lounge for the employees in the new office in answer to the Union's organizational drive. Although I did not credit Cimini's testimony regarding Medaska's termination, I would credit his testimony regarding the split lunch program and the new lounge; his testimony on these matters was clear and concise, believable, and generally supported by the testimony of other witnesses. It appeared to me that, on this subject, Cimini, knowing that he was testifying truthfully, was open and direct in his testimony.

It is reasonable to assume that a change in Respondent's "telephone day" system required a separate lounge where the other employees could have their lunch without disturbing the employees who were answering the telephones. The evidence herein establishes that prior to September Respondent had no such place available to it, although Respondent had been receiving numerous complaints from its employees regarding "telephone day." The parties stipulated that Respondent acquired new office space across the hall from its existing office long before the Union's appearance in November. The testimony also establishes that prior to the Union's appearance in November Cimini informed the employees that Respondent had acquired this space and that Respondent would establish a lounge for the employees either in the new office space or that desks and machinery would be placed in the new office space and an expanded lounge would be established in the existing office space. As Respondent had therefore decided to create a lounge for its employees prior to the appearance of the Union, I find it unnecessary to make a determination as to when Respondent made its final decision as to which location the lounge would be at; either way the employees would have a new expanded lounge (and correspondingly a split lunch system) and this was decided prior to the Union's appearance in November. I would therefore dismiss this 8(a)(1) allegation.

I would likewise dismiss the allegation that Respondent violated Section 8(a)(1) of the Act by withholding its annual wage increases from January to February and the allegation that it violated Section 8(a)(1) of the Act by granting a wage increase in Feburary that was significantly greater than those granted in the past. As regards the first allegation, Respondent was clearly in a bind; the records establish that Respondent generally granted wage increases to its employees, at least, in January of each year. Presumably because of the election conducted on January 10, Respondent delayed granting its usual wage increase to the employees at that time. In fact, Respondent may well have placed itself in a precarious legal situation if it had granted the increase in the first 10 days of January (why could not it wait until after the election?) or if it had granted the increase during the last 20 days of January (why could not it wait until the Regional Office issued a determination on the Union's objections to the election?) I would therefore find that Respondent's action in withholding the regular wage increase for a 1-month period did not violate Section 8(a)(1) of the Act.[24]

Whether the amount of the increase given to the employees in February, retroactive to January, violates the Act is a more difficult issue. All employees were granted a $20-a-week wage increase. The record establishes that the January 1979 weekly wage increases granted to the employees ranged from $10 to $15, and that the weekly wage increases granted by Respondent to its employees in July 1979 varied from $15 to $25. In addition, in 1978, four employees received $20 increases in their weekly wages at one point in the year. This establishes that in the past Respondent had occasionally granted $20 wage increases to its employees; however, Respondent never adequately explained why it granted *all* employees $20 weekly wage increases where it previously had granted varying merit increases to its employees. Cimini's testimony that ". . . we didn't have a chance for the reviews" does not ring true; if anything, Respondent had an additional month in which to evaluate the work of its employees in order to determine the amount of increase to grant each of them. However, as the amount of the increase granted in February 1980 was not greatly in excess of the increases granted in 1979, with the increasing rate of inflation during this period, and the arithmetic fact that a higher rate of salary requires a larger actual increase to maintain the same percentage rate of increase, I find that the General Counsel has not met his burden herein; and I will therefore dismiss this 8(a)(1) allegation.

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, (1980), the Board set forth the rule it will henceforth apply in dual motive or pretextual cases such as the instant matter: "First, we shall require that the

[23] *Baker Manufacturing Co., Inc.*, 218 NLRB 1295 (1975).

[24] In making this determination, I am cognizant of the fact that Gold, in his second speech, stated that the employees' wages would be frozen until the matter was settled and that I have found that statement, in the context in which it was made, violated Sec. 8(a)(1) of the Act.

General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct."

The General Counsel has made such a *prima facie* showing herein. Respondent's explanation for Medaska's termination (as discussed, *supra*) is so incredible as to lead to the inescapable conclusion that she was terminated to prevent her from voting in the upcoming Board election. Although there was no clear evidence of Respondent's knowledge of Medaska's union activities or preference, I believe this knowledge can be imputed to Respondent under the small-plant doctrine.[25] This doctrine is applicable here in that, during the period in question, there were only 12 or 13 employees in the unit working within an enclosed office area. In addition, Cimini had a view of this area from his office. There was also testimony that after the Union began organizing these employees Medaska spent a lot of time during her breaks speaking with Evers, the employee known by Respondent to be the leading adherent on behalf of the Union.

That being established, the remaining question is whether Respondent has satisfied its burden to demonstrate that it would have terminated Medaska on January 4 even if not for the election taking place 6 days later. On the basis of all the evidence herein, the answer is clearly that it has not. As stated above, there was no valid business reason (as compared to an antiunion reason) for terminating Medaska on January 4. The evidence leaves no doubt that, if it were not for the election, Medaska would not have been terminated at all, or at least not until January 28; Medaska was a good employee, Respondent's office was busy during this period, and Respondent was not able to locate a permanent replacement for her until the end of January, long after she informed Cimini, on January 4, that her wedding plans had been terminated and that she wished to remain in Respondent's employ. I therefore conclude that Respondent terminated the employment of Medaska in violation of Section 8(a)(1) and (3) of the Act.

XIII. THE EFFECT OF SUCH CONDUCT ON THE ELECTION

The objections include certain of the allegations contained in the complaint herein. The finding that Respondent promised Evers and Gerard to correct the employees' grievances in the future, in violation of Section 8(a)(1) of the Act, sustains Objection 1. The finding that Respondent interrogated Evers in violation of Section 8(a)(1) of the Act, threatened and interrogated Plant in violation of Section 8(a)(1) of the Act, and threatened Gerard in violation of Section 8(a)(1) of the Act sustains Objection 2. The finding that Respondent, by Gold's speeches of January 4 and January 9, threatened employees with the loss of benefits in violation of Section 8(a)(1) of the Act sustains Objection 3, and the finding that Respondent's termination of Medaska on January 4 violated Section 8(a)(1) and (3) of the Act sustains Objection 4. In view of the bargaining order found applicable herein, *infra*, it is recommended that that election conducted on January 10, 1980, in Case 22-RC-8060 be set aside and that the representation proceeding be dismissed.

XIV. THE REFUSAL TO BARGAIN

The Supreme Court, in *N.L.R.B.* v. *Gissel Packing Co., Inc., supra*, set forth the situations where bargaining orders would be appropriate relief: the first were those situations where an employer had committed "outrageous and pervasive" unfair labor practices which eliminate the possibility of holding a fair election; the second were the "less extraordinary cases marked by less pervasive practices" where there is a showing at one point that the Union had authorization cards from a majority of the unit employees, and the Board concludes that the extensiveness of the unfair labor practices "have the tendency to undermine majority strength and impede the election processes."

As of November 15, the Union represented a majority of the employees in the unit herein; therefore, the only remaining question is whether the extensiveness of the unfair labor practices committed by Respondent warrant the imposition of a bargaining order under the tests established by *Gissel, supra*. The events herein took place among a unit consisting of 12 to 13 employees working together in 1 office. The unfair labor practices found, which immediately affected all the employees, were the threats made by Gold in his speeches that negotiations would start at ground zero and that their benefits would be frozen if the Union won the election and he had to negotiate with the Union, that their wages would be frozen until the matter was settled, that any employee who incurred dental bills would have to pay for them on their own because these benefits would be frozen, and that there was a possibility that if the Union won the election a timeclock could be installed. These threats rate high on the "*Gissel* scale of seriousness" because they were to all of the employees. The Board also considers 8(a)(3) terminations as serious in determining whether a bargaining order is warranted. As the Board stated in *Armcor Industries, Inc.*, 227 NLRB 1543 (1977):

> The Board is well aware that no employer conduct is more serious or has consequences more crippling to the free exercise of Section 7 rights than the discharge of an employee because of the employee's union affiliation. Indeed, both the Board and the courts have frequently pointed out that such conduct "goes to the very heart of the Act." . . . The effect of such a discharge is particularly pronounced when, as is true of the instant case, one of the victims is well known as the instigator of the Union's drive. In such circumstances, only the most remarkably obtuse employee would fail to perceive and to heed the employer's message that any employee who advocates the Union is embarking on a perilous venture.

[25] *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959).

Although Medaska did not initiate the drive to have the Union represent Respondent's employees, she solicited authorization cards from three employees. When she was terminated by Respondent 6 days before the election, the message was clear to all the employees that supporting the Union can be dangerous.

I have also found 8(a)(1) violations by Gold directed at three employees individually: interrogation of Evers and Plant, the promise of the future corrections of grievances to Evers and Gerard, and threats to Gerard and Plant.

Considering the small size of the unit involved herein, the number and seriousness of the violations referred to, *supra*, and that they were committed not by a low level supervisor, but by Gold, Respondent's vice president, I find that a bargaining order is warranted herein under the "less extraordinary" test of *Gissel, supra*,[26] and that the duty to bargain commenced on November 16, 1979, the date the Union requested recognition after it had attained majority status the previous day.

XV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in sections VII through XI, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by:

(a) Threatening its employees with the loss of benefits should they choose to be represented by the Union as their collective-bargaining representative.

(b) Threatening to discontinue the employees dental benefits should they choose to be represented by the Union as their collective-bargaining representative.

(c) Threatening to freeze the employees' wages and other benefits due to their activities on behalf of the Union.

(d) Threatening to install a timeclock if the employees chose to be represented by the Union as their collective-bargaining representative.

(e) Interrogating its employees regarding their activities, and the activities of other employees, on behalf of the Union.

(f) Promising to correct the grievances of the employees in order to induce them to withdraw their support from the Union.

(g) Threatening employees with discharge in order to induce them to withdraw their support from the Union.

4. Respondent violated Section 8(a)(1) and (3) of the Act by terminating the employment of Diane Medaska because she engaged in activities on behalf of the Union.

5. The following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All full-time and regular part-time office clerical employees employed at Respondent's Parsippany office, but excluding confidential employees, professional employees, guards, all other employees and all supervisors as defined in the Act.

6. Since November 15, 1979, and at all times material thereafter, the Union herein represented a majority of the employees in the above-described appropriate unit, and has been the exclusive representative of all said employees for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

7. By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-described unit since on or about November 16, 1979, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent's unlawful conduct interfered with the representation election conducted on January 10, 1980.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully terminated Diane Medaska, I shall recommend that Respondent be ordered to offer her immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent job, without prejudice to her seniority or other rights and privileges, and to make her whole for any loss of earnings suffered as a result of the discrimination by payment of a sum equal to that which she would have earned, absent the discrimination, with backpay and interest computed in accordance with *F. W. Woolworth Company*,[27] and *Florida Steel Corporation*.[28]

For the reasons set forth above, I shall recommend that Respondent be ordered to recognize and, upon request, to bargain collectively with the Union as the exclusive bargaining representative of the employees in the above- described unit. As a bargaining order has been found appropriate, it would be consistent that the election in Case 22-RC-8060 be set aside and that the petition in that matter be dismissed.[29]

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[26] *American National Stores, Inc.*, 195 NLRB 127 (1972); *Armcor Industries Inc., supra*.

[27] 90 NLRB 289 (1950).

[28] 231 NLRB 651 (1977). See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[29] Although I have found that the unfair labor practices committed herein warrant the imposition of a bargaining order, I would find that they were not so egregious or widespread as to warrant a broad order. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[30]

The Respondent, Progressive Supermarkets, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with the loss of benefits should they choose to be represented by the Union as their collective-bargaining representative.

(b) Threatening to discontinue its dental benefit plan if its employees choose to be represented by the Union as their collective-bargaining representative.

(c) Threatening to freeze the employees' wages and other benefits because of their activities on behalf of the Union.

(d) Threatening to install a timeclock if the employees selected the Union as their collective-bargaining representative.

(e) Interrogating its employees regarding their activities, and the activities of other employees, on behalf of the Union.

(f) Promising to correct the grievances of its employees to induce them to withdraw their support from the Union.

(g) Threatening its employees with discharge should they choose to be represented by the Union.

(h) Discharging or otherwise discriminating against employees because of their union activities or sympathies.

(i) Refusing to recognize, and, upon request, bargain with the Union as the exclusive bargaining reprcsentative of its employees in the following unit:

> All full-time and regular part-time office clerical employees employed at Respondent's Parsippany office, but excluding confidential employees, professional employees, guards, all other employees and all supervisors as defined in the Act.

(j) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Diane Medaska full and immediate reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay suffered as a result of the discrimination against her in the manner set forth above in the section entitled "The Remedy."

(b) Recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the bargaining unit set forth above with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such understanding in a signed agreement.

(c) Post at its Parsippany, New Jersey, location, copies of the attached notice marked "Appendix."[31] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint herein be dismissed insofar as it alleges violations of the Act not specifically found herein.

IT IS FURTHER ORDERED that the election in Case 22-RC-8060 be set aside and that the petition in that matter be dismissed.

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[30] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[31] In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."